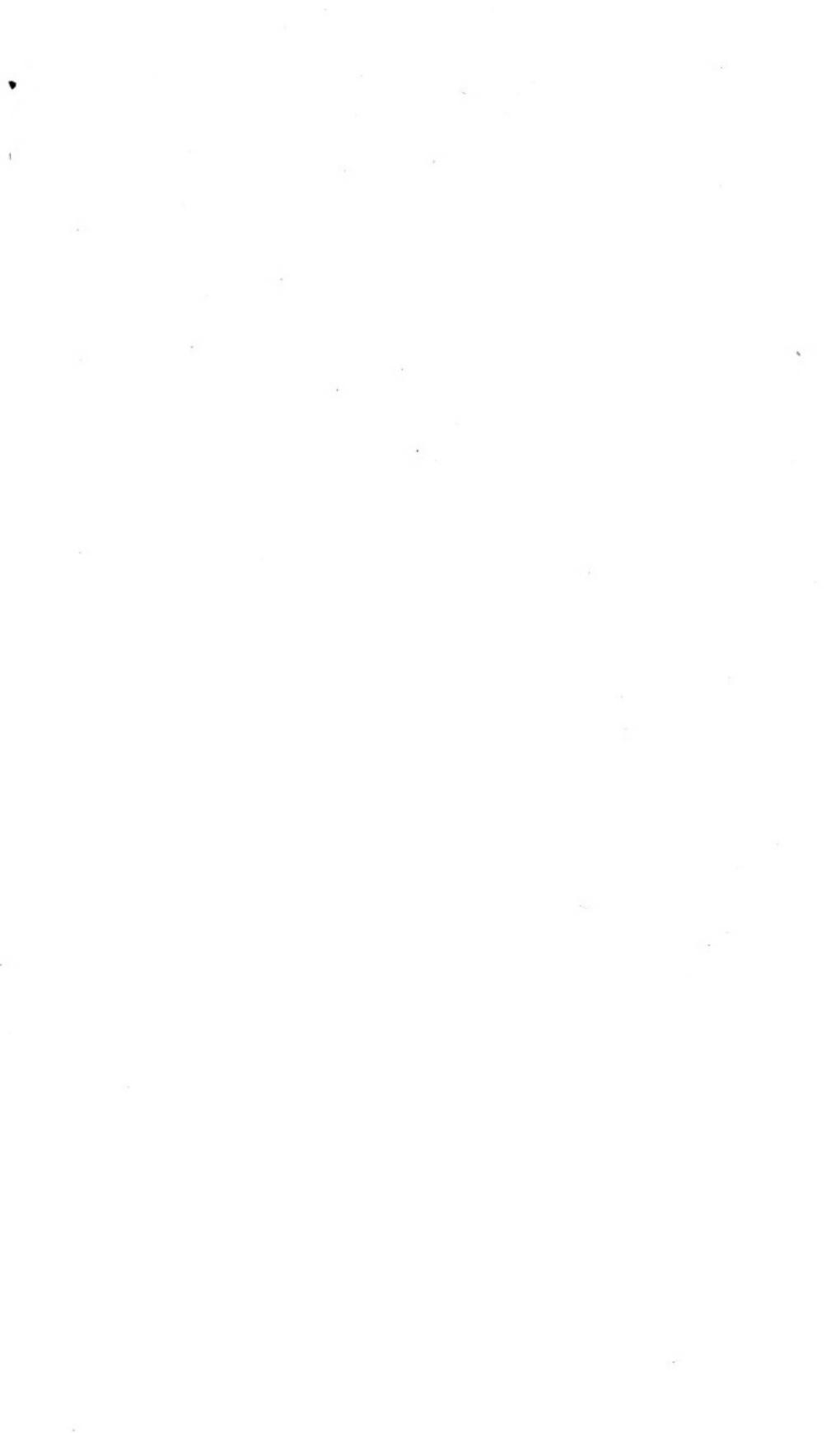


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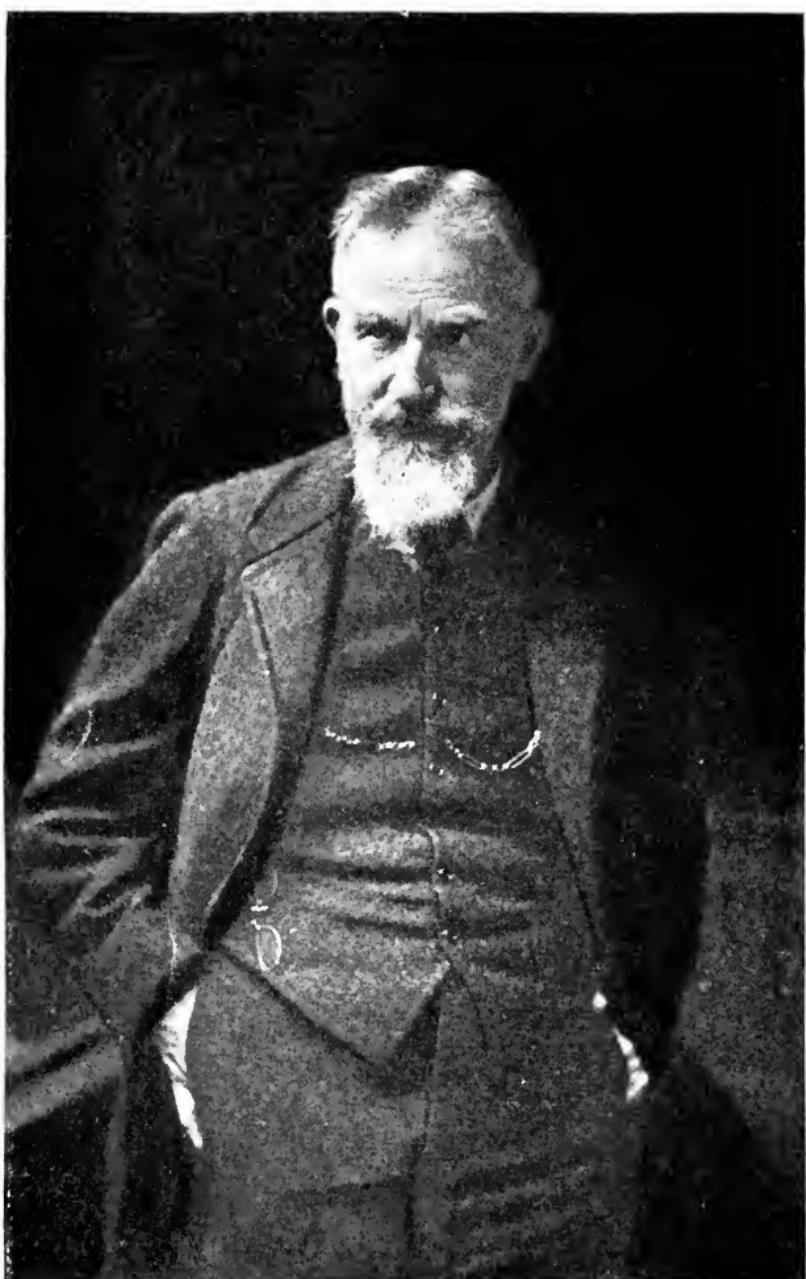
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THE MARRIAGE REVOLT







BERNARD SHAW

In his works he has fearlessly exposed the shams, injustices
and immoralities corrupting our present marriage system

THE MARRIAGE REVOLT

A Study of Marriage and Divorce

BY

WILLIAM E. CARSON

AUTHOR OF "SOCIAL PROBLEMS OF TODAY," "MEXICO," ETC.



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CONTENTS

CHAPTER	PAGE
I. MARRIAGE, PAST AND PRESENT How social progress has changed matrimonial ideas and conditions	1
II. WOMAN'S EMANCIPATION Its influence on family life, and on marriage and divorce	34
III. THE NEW MORALITY Some startling modern ideas which are influencing the world	64
IV. THE IDEAL MARRIAGE Interesting views on this subject gathered from current discussions	94
V. DIVORCE IN THE UNITED STATES An explanation of its remarkable increase, its causes and effects	119
VI. LEGAL EXPERIMENTS The object and effect of some recent amendments to state laws	162
VII. NEW YORK'S DIVORCE LAW Its restrictions on divorce and some of its deplorable results	181
VIII. PROBLEMS OF THE POOR Their adjustment in the New York Court of Domestic Relations	202
IX. EASY DIVORCE A study of the Nevada divorce law and the divorce colony at Reno	226

CHAPTER		PAGE
X. SOME HISTORICAL FACTS		
The progress of marriage and divorce from primitive times to the present day		255
XI. DIVORCE PROBLEMS IN ENGLAND		
Conditions which have led to the present demands for reform		287
XII. THE WORLDWIDE UNREST		
Social changes in other countries; their effect on marriage conditions		318
XIII. PUBLIC OPINION		
Some representative views which show the trend of modern thought		360
XIV. SCIENCE AND MARRIAGE		
How science is trying to solve some intricate matrimonial problems		382
XV. REMEDIES FOR PRESENT EVILS		
Plans for promoting happier marriages and lessening the hardships of divorce		408
XVI. THE FACTS SUMMED UP		
A review of present tendencies and a forecast of some probable results		434
APPENDIX		
Summary of the marriage laws of the United States . .		469
INDEX		479

INTRODUCTION

"There is a revolt against marriage, which has spread rapidly within my own recollection, although we still assume the existence of a large and dangerous majority which regards the least hint of scepticism as to the duty and holiness of marriage as infamous and abhorrent."

—BERNARD SHAW. (Introduction to "Getting Married.")

"It is worse than useless to attempt the consideration of the subject of divorce to-day by means of categories of thought and ethical standards in vogue half a century ago. What is needed is to bring to the subject the same degree of scientific criticism and investigation to which we subject the facts of our modern political and industrial life, let the consequences be what they may."

—JAMES P. LICHTENBERGER. ("Divorce, A Study in Social Causation.")

THE two passages quoted above serve to indicate the motive and scope of this book. Its object, in the first place, is to present the facts and opinions that have led to what appears to be a widespread revolt against conventional marriage and an equally widespread increase of divorce; next, to discover to what extent any definite new conceptions, emerging from this conflict, are finding acceptance; and, lastly, from an examination and analysis of causes and effects to obtain a forecast of probable future results.

The need for such a work must be apparent to any-one who has followed current discussions of marriage and divorce. Owing to the influence of inherited ideas of morality and the fear of offending conservative opinion, there has been a constant suppression or distortion of facts, so that the public at large has gained only a one-sided view of questions which fairness demands should be examined from all sides.

As an example of this subservience to conservative opinion, it may be mentioned that when a well-known sociologist delivered an address in New York recently, in which he called attention to the need for a drastic reform of the divorce law of the Empire State, his remarks were unnoticed by the press. On the other hand, when an eminent clergyman, a few days later, made some commonplace observations in public concerning the "divorce evil," not only were his words quoted fully by the local newspapers, but they were telegraphed all over the country.

In commenting on this incident, a magazine editor confessed that to print a scientific discussion of marriage and divorce on the basis of anything but the customary ideas and sentiments of morality would estrange his readers. A New York politician took the same view, and admitted that although he favored a more liberal divorce law, he dared not advocate it on account of public opinion. It is this fear of conservative opinion, and the suppression of advanced individual opinion, which have kept vast numbers of people from learning the actual truth.

New social ideas, however, have always met with

opposition. All modern social ideas were at one time, historically speaking, immoral in the sense that they were against convention. And this has been particularly true of new ideas concerning marriage or its dissolution.

Religion has emphasized the sacredness of marriage, even going so far as to assert that marriages are made in heaven, and that for man to put asunder whom God hath joined is impious. The newspapers, furthermore, by habitually acquainting people with the pictorial and sensational features of divorce suits have strengthened the popular idea that only those who have been in some way immoral get into the divorce court, and have confirmed the impression that there is something of immorality in the proceeding itself. Thus it is that among great numbers of uninformed and unthinking people divorce is regarded as something not exactly respectable; and it is in catering to the ideas of such people that a certain class of newspapers and periodicals prudishly refrain from discussing the subject except in terms of condemnation.

In spite of the attitude of conservatism, it is true, nevertheless, that the world to-day is confronted by some remarkable social conditions which have had a profound effect on marriage and have brought about the present enormous increase of divorce. Radical ideas on marriage are exerting a widespread influence, while, at the same time, there have been persistent attacks on conventional morality. There are also various types of public opinion, ranging from the ultra-religious view that marriage should be binding for life and divorce unobtainable, to the ultra-radical idea of free unions and free divorce. In a complete study of marriage and divorce these differ-

INTRODUCTION

ent opinions must be taken into account. To ignore any of them is manifestly unfair.

Although subservience to conservative opinion has done much to hinder society from boldly facing and dealing with existing conditions, there are, however, no subjects so much discussed to-day as marriage and divorce. And there is undoubtedly a popular demand for enlightenment on these subjects, a demand for facts which have not been colored or distorted by the emotions which generally attach themselves to a prejudiced examination of conventional matters of sentiment and morality.

Without going through a whole library, it is obvious that the average man or woman cannot possibly assemble all the facts relating to marriage and divorce, and the opinions based upon them, in order to weigh them accurately. Nor is the average reader equipped to do so since they involve the fields of history, religion, politics, science, philosophy and sociology. To supply this information is the object of the present volume. Its object throughout is to give a fair and complete presentation of facts, and by a study of these to reach certain conclusions.

The opening chapters deal with the almost spectacular changes that have occurred in social conditions in less than fifty years, in which time many aspects of marriage have been transformed while the home and domestic life has been rendered far less essential to great numbers of people. Due weight is also given to the new conditions arising from the entrance of woman into the business world and her approaching entrance into the political world.

As a result of these social transitions, allied with his-

torical, scientific, medical and sociological research, new conceptions of marriage are supplanting traditional ideas, while, at the same time, there has been a growing dissatisfaction with various features of conventional matrimony and even with certain phases of conventional morality. These aspects of our present social unrest are fully considered. The new school of literature which has dealt with these subjects is also examined and analyzed, while the present drift of popular opinion on marriage and divorce is shown by a review of current discussions.

Having considered the advent of new ideas and conditions of marriage, which have inevitably led to greater freedom of divorce, the question naturally arises: What should the attitude of society be? Should it make divorce easier or more difficult?

The only practical answer to the foregoing question is to be made after a thorough investigation of causes and effects. With this object, a complete insight is given into the progress of divorce in the United States during the last forty years, statistical figures are presented, causes are examined, and the efforts of lawmakers to cope with the divorce problem are fully discussed. A careful comparison is next made between conditions in an Eastern State having a severely restrictive divorce law and those existing in a Western State where divorce is comparatively easy to obtain.

That the increase of divorce is not confined to the United States is shown by chapters which discuss the movements for liberal divorce laws in England and various countries of continental Europe. The world-wide

INTRODUCTION

effect on marriage and divorce of the long conflict between ecclesiastical and civil law is shown in a comprehensive chapter dealing with this topic and giving a concise historical account of the development of matrimonial institutions.

The question, How does public opinion regard divorce? is answered by a chapter giving the views of public men, clergymen, scientists, sociologists and representative women. A succeeding chapter discusses the achievements of science in coping with the intricate problems of matrimony, and with this is embodied an account of the eugenics movement. Consideration is next given to some suggested remedies designed to prevent undesirable marriages and to lessen the hardships of divorce. In the final chapter there is a summing up of all the facts and opinions presented, which enables us to reach some definite conclusions.

From this summary of contents it will be seen that while a wide range of subjects has been covered, all of them have a direct connection with the two main topics. It may be added that this comprehensive survey of the modern aspects of marriage and divorce is made vitally necessary, because comparatively few people appreciate the effects of recent social progress or realize the remarkable changes it has wrought in ideas and conditions. Nor are they aware, for instance, of the conflict that is taking place between the ecclesiastical and the civil theories of marriage or of the incongruities that have been occasioned by the retention of ancient and inflexible matrimonial conventions under changed and ever changing social conditions.

Considering the supreme importance of marriage to society as at present constituted, it is amazing that so many people should remain ignorant of its various modern aspects and be content to regard it superficially in its traditional features of sentiment and morality. To these it may be said that a thorough study of such modern aspects may create, as it has in so many other matters of human relationship, a higher sentiment and a higher morality. It cannot, in any case, fail to clarify individual opinion.

People who now deplore divorce may discover, on closer scrutiny, that it is really the causes for divorce they deplore. Legislators who have passed laws to restrict divorce may discover, on better acquaintance with the facts, that what they really wished to restrict was unhappiness in marriage. Public men who, governed by conservatism, have denounced the "divorce evil," may discover that what they intended to denounce was a marriage evil. By careful investigation, all these people will certainly find that oftentimes immoral results have arisen by reason of the difficulties which now beset divorce, and that more serious evils may be expected from further restrictions or from absolute suppression.

A study of the problems of marriage and divorce could scarcely content itself with an examination into past and present facts only,—especially since it must recognize that the changes which have occurred have been brought about by the evolution of moral opinions and ideals. It is necessary to conjecture whither these tendencies lead.

Modern radical ideas on marriage, like all new social ideas, will soon disappear or they will gradually cease to

INTRODUCTION

be regarded as radical and dangerous, and will eventually win over the conservatives who now view them with fear and dismay. What, then, is likely to be their probable result? What reforms will society bring about when, having recognized that certain traditional features of marriage no longer fit modern conditions, it seeks to adjust ancient conceptions to its growing need rather than its need to its inherited conceptions? What steps will it take to prevent unhappy marriages since it is unthinkable that society shall crudely content itself with treating the symptoms rather than the causes of the disease?

When modern tendencies gather head it will be by reason of just such a thorough investigation as is undertaken here. It is certain, moreover, that many people, if a comprehensive survey of the facts of marriage and divorce is presented to them, may conclude that their opposition to divorce, in the name of morality, at least, is mistaken, and that the evil of an ill-assorted marriage is no less to be feared than what they have called the divorce evil.

When conversant with the facts, many may decide that the benefit to society through marriage is no more inevitable than is the damage to society through divorce. Or they may even go a step further and conclude that the forced maintenance of a bond from which the justification has departed is in itself immoral, and the results of such an immoral condition are hostile to society. Or finally some may surmise that marriage, when childless, is not important to society; that the children of a union are the only matters in which society has any proper interest.

THE MARRIAGE REVOLT

I

MARRIAGE, PAST AND PRESENT

HOW SOCIAL PROGRESS HAS CHANGED MATRIMONIAL
IDEAS AND CONDITIONS

WHILE throughout the world to-day the increasing number of marriage failures and the rapid growth of divorce are commanding serious attention, in no other country have these conditions become so acute as in the United States.

According to Government statistics, nearly a million divorces were granted by American courts in twenty years ending with 1906, since which time there has been a large and persistent increase. To-day it is estimated that no less than a hundred divorces to every hundred thousand of population are annually recorded. Divorce, it is asserted, has become the fateful ending of one American marriage in every twelve. Amazed by these facts, thoughtful people are naturally asking why it is that marriage is failing to such an extent, and why our national divorce rate is mounting so rapidly.

No other topics of the day have been more earnestly and bitterly discussed than these questions of marriage

and divorce. Pulpit and press have dealt with them; learned conferences have debated them; governments have compiled and analyzed all available data bearing upon them; they have been threshed out in a constant stream of newspaper and magazine articles, problem novels and serious books.

That discussions of this kind should have excited a vast amount of public interest is not surprising; for there are no topics so humanly interesting as those which concern the relationship of men and women. All the romance of the world, most of its poetry, and a large part of its serious literature have drawn their inspiration from love, mating and marriage. But what is of far greater importance is the fact that anything which affects the institutions of marriage and the family extends to the very foundations of society, and thus it is that the problems of marriage and divorce are inevitably linked with the welfare of the race.

Current discussions of these problems have served to reveal the wide diversity of opinion that exists in regard to them. In constant succession, arguments appear in favor of divorce and against divorce, intermingled with demands for sweeping reforms in our present marriage system and denunciations of such revolutionary ideas.

Religion and politics, science and philosophy, all play their parts in these discussions, each offering a different solution of the problems involved and presenting such a confusing mass of affirmations and contradictions as to make it extremely difficult for the average reader to reach any definite conclusion. And yet it is manifestly impossible to get an intelligent grasp on these subjects with-

out examining, analyzing and comparing all facts and arguments entitled to consideration.

Furthermore, while arguments based on old doctrines or new theories are interesting, yet in this practical age facts usually carry more weight than arguments, and this is especially true in regard to the problems of marriage and divorce. They are scientific problems of the most complicated character, as well as of the highest importance to society, and, therefore, in order to gain a complete understanding of them it is necessary to reach for facts in every direction.

At the outset, it may be remarked that, divorce being the counterpart of marriage, the two subjects cannot be logically considered apart. Divorce is the sequel of unsuccessful marriage; consequently to ascertain the cause of the rapid growth of divorce, it is necessary to begin by investigating the reasons for the vast increase of matrimonial failure. It is clear, moreover, that divorce will always be governed by the prevailing doctrines of marriage. Formerly, when the sacramental idea of marriage was universally held there were comparatively few divorces; in these days, the more general recognition of marriage as a civil institution has removed many of the obstacles to liberal divorce customs and legislation, and hence there has been a marked increase of divorce.

This modern view of the marriage relation has given rise to much controversy, and it forms the principal feature of most of the current discussions. On one side we find conservative opinion upholding the sacramental idea of marriage and opposing freedom of divorce, while, on the other hand, liberal opinion regards marriage as a

civil contract which, like all other contracts, may for various reasons be cancelled. In proceeding to our study it is necessary to consider these points of difference somewhat more in detail.

According to the conservative view of marriage, which is emphasized by most of the Christian churches, marriage is not only to be regarded as a sacrament, but as of lifelong duration. Those who take this view are convinced that civilization depends upon the preservation of the matrimonial institution as at present constituted; and not only do they regard the increase of divorce as an evil which menaces the stability of family life, but one which exerts an immoral influence on society at large. The spread of radical ideas on marriage, and the increasing laxity regarding the permanence of the marriage bond are consequently viewed with deep concern by the conservative element.

For the purpose of remedying these supposed evils the upholders of conservatism favor the enactment of laws designed to make marriage more binding and the obtaining of divorce far more difficult than at present. To this demand a large body of the public, clinging to traditional ideas of marriage, readily gives support. Conservative opinion expresses its disapproval of radicalism chiefly through the press and by means of public movements for the suppression of the "divorce evil." It has undoubtedly had an important effect on legislation, for while the divorce laws of the various States differ in regard to the grounds for divorce, they practically agree in their restrictive purpose.

In direct opposition to the conservative view there is

what may be termed the liberal idea of marriage. Those who take this side of the argument believe that marriage should be regarded solely as a civil institution, completely exempt from any ecclesiastical control; that the churches, in short, have no connection whatever with marriage from the legal point of view. The whole tendency of modern civilization, it must be admitted, is towards a general recognition of the civil character of marriage and an acceptance of the principle that divorce should be granted for any reasonable cause.

Among those who take the liberal view there is an impression that the present marriage system, inherited from past ages, fails to answer modern needs and aspirations in certain of its aspects, and therefore requires modifying or reforming; that like all other social institutions it is capable of further development and improvement. Divorce, they are convinced, instead of being an evil is usually productive of good. In other words, from their point of view, divorce is a remedy provided by society for the relief of matrimonial ills that can be cured in no other way.

In spite of these wide differences of opinion, there is, nevertheless, one point on which the new and the old schools of thought apparently agree. An examination of the views of the most radical writers, and those whose conservatism is equally pronounced, would probably show that all are agreed in recognizing one ideal of marriage. This ideal is represented by the union based upon attraction and mutual choice, animated by singleness of purpose, sympathy and love, enduring and lifelong. Evolved through long ages of developed human consciousness, this

ideal remains fixed and eternal. Resting upon no artificial basis, it has been formed through the gradual advancement of mankind and the improvement of the race. In recognizing this fundamental ideal of marriage radical and conservative meet in complete accord.

Such an ideal, however, like every other human ideal, is not always possible of attainment. Experience has shown, indeed, that only in exceptional cases is it ever fully attained. All the proverbs of the ages, dealing with matrimony, point to this conclusion. While every normal, healthy-minded man and woman undoubtedly believes in this ideal of marriage, yet, with fallible human nature, it is not surprising that mistakes occur and that many marriages are productive of nothing but misery. Realizing this, society has had to enact divorce laws and establish divorce courts in order to provide relief. And it is on this question of divorce that the advocates of liberal and conservative views—despite their agreement concerning the ideal marriage—come into direct conflict.

The upholders of the sacramental idea of marriage believe that husband and wife should be united for life, even when affection is destroyed and has been replaced by aversion or hatred. No matter whether a marriage is happy or unhappy, conservatism insists that it should be of lifelong duration; and, therefore, while agreeing that separation may be permitted, conservatism strongly condemns absolute divorce. On the other hand, according to the liberal idea, true marriage ends when the natural bond of affection has been severed, and morality then demands that such a marriage should be legally dissolved.

Herbert Spencer, it may be added, took the liberal view of marriage over thirty years ago, when he predicted the present increase of divorce. At that time he wrote:

"As monogamy is likely to be raised in character by a public sentiment requiring that the legal bond shall not be entered into unless it represents the natural bond, so perhaps it may be that the maintenance of the legal bond will come to be held improper if the natural bond ceases. Whereas, at present, the union by law is thought to be more important, there will come a time when the union of affection will be held as of primary moment and the union by law as of secondary moment."

In accepting this view, liberal opinion is convinced that society is not benefited by compelling unhappily married people to live together when they wish to separate, or by granting them the unsatisfactory expedient of a judicial separation without the right to remarry. It recognizes that human passions are the same after as before divorce, and that to prevent remarriage is to give an excuse for vice.

Among those who have adopted the liberal view are many sociologists who have made a scientific study of causes and effects. In their opinion, the present increase of divorce is the direct result of social progress and economic changes which have altered the status of the home and the family, and have given rise to widespread unrest. Society, in short, is undergoing a readjustment in many ways, new ideals of married life have been introduced, and during the transition period there have been an increasing number of marriage failures and a rapid growth of divorce. According to this theory, the laws of evolu-

tion which operate in the material world are also at work developing human thought and human institutions, and are incidentally remoulding the institution of marriage to fit the requirements of modern life.

As the result of modern conditions a severe strain has been put on the marriage bond in even the best circumstances, while it is becoming increasingly difficult for sociologically bad marriages to continue, whereas under former conditions they were not even discovered to be bad. Those who have reached this conclusion—and among them are some eminent men—regard the increasing number of marriage failures and the accompanying growth of divorce as “costs of progress” arising from causes not necessarily evil, which are destined, in the end, to lead to new and better conditions. The causes responsible for divorce, they believe, cannot be influenced by restrictive laws and are beyond the control of any legislation.

While conservatism, as we have seen, clings to traditional ideas and insists that the institution of marriage must remain fixed and unchangeable, liberal opinion, on the contrary, asserts that marriage has not only undergone many changes in the past, but is even now in process of further development. It is pointed out that marriage has never been fixed in character; but in the course of ages it has passed through various stages of promiscuity, polygamy and even polyandry until it has reached its present condition of monogamy common to all civilized races. There has also been the progress of the home from its status in primeval times and in nomadic life to that of the higher stages of civilization.

It is further argued that while conservatism upholds traditional notions of marriage, disapproves of all innovations and condemns divorce, yet the very fact that a large element of the public has adopted the liberal view furnishes conclusive proof that in spite of all opposition new ideas of marriage are spreading. At the present time there is undoubtedly a widespread revolt against the bondage of tradition in relation to marriage. Startling views on this subject are being expressed by men and women who are classed among the world's foremost thinkers, and in progressive countries they have done much towards causing a relaxation of the laws of marriage and divorce. While this uprising against convention does not necessarily mean that there is any tendency towards free-love or other license, it shows clearly that the liberal thought of the world is insisting that the conditions of marriage shall be made to conform to the ideas of the present age.

Among people who take this view there is, in these days, a strong conviction that the traditional attitude towards marriage as a sacrament to be directed by the churches, or as a pleasure to be exploited by individuals, must be changed if the life of the family is to be established on a new and higher basis. It is one of the most encouraging signs of the times that what ex-President Eliot of Harvard University has called "the conspiracy of silence touching matters of sex" has been broken, and those whose opinions are entitled to respect are discussing these great problems which so vitally affect our lives.

Many of the new ideas concerning marriage are condemned by conservative people, chiefly because such ideas clash with the existing order of things. All history, how-

ever, has shown that new social ideas invariably meet with opposition. Society, in the main, is always conservative, and therefore views with distrust anything which threatens to overturn the laws it has laid down. Experience has also shown that the radical ideas of one generation oftentimes become the conservative opinions of the succeeding age, and that which at first seemed radical was radical only because it was strange and untried.

Morality, it has been said, is not a stagnant quality, the same yesterday, to-day and forever, but is transitional and evolutional. "What people call vice is eternal; what they call virtue is mere fashion. Morality, in short, is a creature of occasion conditioned by circumstance. This is because, historically considered, progress connotes repudiation of custom. Social advance takes effect through the replacement of old institutions by new ones. Two thousand years ago, for example, Christianity was regarded as immoral and Rome attempted to suppress it. It was condemned by such a great man as Marcus Aurelius. To-day it is regarded as the supreme standard of morality. The classic world considered love, pity and self-sacrifice as simply weakness and sometimes worse; the Christian world not only regarded them as moralities, but incarnated them into a god. History thus shows us a world strewn with wrecks of institutions whose laws, upheld for a time as fixed, were eventually broken by the triumphant assertion of the will of man. The ideal is dead, long live the ideal is the epitome of all human progress."

To-day one may see in the dungeons of Nuremberg

or Regensberg the ghastly instruments with which men once conducted the process of justice. To torture those accused of crime in order to extort confessions was considered highly moral. In Blackstone's time, in England, capital punishment was inflicted for 160 offenses. Men and women were hanged for petty larcenies. The punishment for treason which the English law imposed at that time was only equalled in horror by the tortures of ancient China. In later times in England insane persons were beaten and otherwise ill treated; people even visited the asylums to be amused by the antics of the demented. Less than a hundred years ago intemperance was not considered a disgrace. It was common for a man to drink his bottle of port after dinner and to be carried to bed in a state of intoxication. Some of the foremost statesmen were confirmed drunkards.

In former ages, conservative opinion, backed by the clergy, asserted that laws and conditions were satisfactory, and had any reformer ventured to protest against the wholesale executions, the torturing of suspected criminals or the inhuman treatment of the insane, he would probably have been regarded as a dangerous anarchist. It was because drunkenness was tolerated by the majority of conservative people that the first temperance reformers were ridiculed, attacked and insulted, while their ideas were pronounced absurd and even dangerous. At that time, the temperance movement was considered to be merely an outbreak of ignorant fanaticism and puritanical provincialism, and instead of giving it support, the newspapers ridiculed it. The history of the temperance movement, however, has been the same as that of every other

beneficial movement; only after long and persistent effort, and a hard struggle against conservatism, have any reforms ever been accomplished.

We are now witnessing the results of these social changes. The radical ideas of the seventeenth and eighteenth centuries, and even those of the first half of the nineteenth century, have become the conservative ideas of to-day. As the result of social progress, criminals are now treated with some degree of humanity, and radical reformers are even insisting that the purpose of imprisonment should be to uplift and not to degrade. Conservatism still approves of capital punishment, which, until recently, enabled the newspapers to publish accounts of hangings and electrocutions; but there is happily an increasing public sentiment in favor of abolishing the extreme penalty. Insane asylums are now conducted on humanitarian principles, and their inmates receive the benefit of the highest medical skill. The temperance movement is gaining greater strength every year; drunkenness is no longer tolerated in business or decent social circles. Realizing, at last, the destructive effects of alcohol on national life, the foremost nations are now striving to suppress this inherited evil.

Thus, while every century of which history has been preserved has shown its horrid side of life, its cruelties, its sufferings without number, yet each succeeding century has also shown some point gained, some hideous feature of life eliminated.

Not only has there been an advance in moral standards, but there has been a moral awakening in the present age to which previous centuries can show no parallel.

One may read the life of Dr. Johnson, for instance, without finding that he ever uttered a single word of protest against the social iniquities of the age in which he lived. The horrors of prison life and even of the hospitals of the period were apparently regarded by him with indifference. To-day such a man would be found on committees for the improvement of social conditions, and writing or lecturing, would be in the thick of the fight against wrong and injustice. At the present time, a host of societies are at work diligently promoting ideas which less than a hundred years ago would have been considered wild and impracticable. History has thus shown that in spite of the warnings of conservatism, the world is steadily improving, that it never stands still, never goes backward.

It is true that to-day we look back with horror upon certain social conditions of former times; but it is quite probable that our descendants will have a similar feeling when they look back upon our own time and consider various features of our social system that are accepted complacently. It is also conceivable that certain features of our present marriage system may be viewed with amazement and condemnation, just as we condemn certain ideas which prevailed a few decades ago. Sexual morality, as an eminent writer has remarked, like all other kinds of morality, is necessarily constituted by inherited traditions, but is modified by new adaptations to the changing social environment.

To realize what remarkable changes have taken place in the status of the home, in social conditions and popular notions of marriage, it is only necessary to glance at

the progress of the last hundred years. Less than a century ago the sacramental idea of marriage was so universally accepted that divorce was seldom obtained. Women were repressed and were taught that their proper vocation was to rear children and attend to the duties of the household. They were even denied their legal rights. Wives were commanded to honor and obey their husbands in any and all circumstances; and even when married life had become intolerable by reason of a husband's misconduct, a wife would submit to ill treatment rather than defy public opinion by seeking a judicial separation.

Conservative opinion, in former generations, was so strongly opposed to any change in traditional ideas of marriage and the subjection of womankind, that it was impossible to foresee the present economic independence of women, their entry into business life and their higher ideals of marriage. Conservative society was then convinced that the prevailing conditions of marriage could not be improved upon and believed that the subjection of women was natural and proper. When the first women reformers demanded equal rights for their sex and denied that the household was woman's only sphere, their ideas were regarded as scandalous, immoral and unwomanly.

To-day, when changed economic, educational and social conditions, with a higher degree of public enlightenment, have contributed to give women a proper share of their just rights and privileges, nobody believes that women should be absolutely controlled by men or that women should be debarred from public life. On the contrary, it is recognized that our social system improves in proportion as the men in it are influenced by good

women, and that woman's wider sphere of activity is destined to work for the benefit of humanity.

While the position of women and the popular view of marriage have thus undergone a great change, the onward sweep of progress has also had a profound effect on the general conditions of social life. From 1815 to 1915 is but a span as history is written, and yet in that period a complete transformation of social conditions has been witnessed. Probably men and women are still living who can remember the introduction of the first locomotives and the first steamboats. Many living to-day can certainly recall their delight at the first photographs. These aged people have seen the amazing growth of our cities and the evolution of social life from comparatively simple conditions to the highly complicated system which exists to-day. They are now living in an age of electric-traction, telephones, wireless telegraphy, automobiles, aëroplanes, monster steamers and office buildings of forty stories. They have seen the world's principles of science and theology completely changed in many ways, while views that were once regarded as absurd or even blasphemous have been adopted by all intelligent people.

While comparisons of the past and present serve to show the extent to which ideas and conditions have changed in less than a hundred years, it is also clear to any observer that to-day human thought and human institutions are still in process of development. The present age is conspicuously a period of unrest and change, of stress and strain, and in spite of the opposition of conservatism forces at work all over the world are steadily undermining old ideas and substituting others better

adapted to suit modern requirements. In the world of science principles once regarded as eternally fixed are disappearing before the marvels of the new chemistry and the new biology. The foremost concepts of human speculation are vanishing before the advancement of the new philosophy. New ideas of government are bringing about great political upheavals; new theories of capital and labor are creating much turmoil in the industrial world; changes in theological views are causing strife in religious circles. The oldest standards of ethics are being questioned, and the deepest truths of spiritual life are challenged. Above all, a multitude of new social problems which confront the world seem to prove that the old economic relationships between men must disappear and give place to something better.

The rapidity of progress has created the strenuous life of the present age, with its fierce competition in the business world and its desperate struggles for success. Innumerable evils have followed in its train, such as the child-labor problem, the sweating system, and the vast increase of the social evil, partly due to the underpayment of female labor in our larger cities. Further progress will bring improved conditions, but in the meantime an increasing strain has been put upon the individual through the maladjustments which inevitably arise. Progress means inevitably the survival of the fittest, and the path of its advance is strewn with its victims. As the army of progress advances and as its movement becomes more rapid, the more numerous are those who fall out of the ranks.

This phenomenon is illustrated, to some extent, by the

increasing rates of insanity, suicide and crime, our homicide record alone having been estimated at over one hundred per million population, while investigation has shown that there were over fifteen thousand cases of suicide in the United States last year. And if fifteen thousand persons were sufficiently desperate to kill themselves it necessarily follows that many thousands more were almost as hopeless and unhappy. Mental unsoundness and nervous diseases, alcoholism, drug-taking and sorrow are said to constitute the chief causes of this increase of suicide, and these seem to be more potent as the race progresses and its interests become more complex, giving rise to moral and social discontent.

It is largely because of our strenuous national life—which one observer has proclaimed is “filling our jails, asylums, hospitals and cemeteries”—that the narcotic drug evil has grown so amazingly in recent years. In 1911, in fact, James Wilson, then Secretary of Agriculture, asserted that there were at least four million persons in the United States addicted to the use of these drugs. As the result of their increasing use, upwards of 500,000 pounds of crude opium, supposedly for “medicinal purposes,” have been imported into this country annually. The consumption of cocaine, in recent years, reached the astounding total of 200,000 pounds, and it is estimated that the amount of heroin consumed was even greater. The extent of the human wreckage and misery represented by this drug consumption has been so appalling that a stringent Federal law has been enacted to cope with the evil. And while this is merely incidental to our subject, it furnishes an impressive illustration of the high

pressure of modern living which is affecting the marriage relation so seriously.

In domestic life various influences are also responsible for a widespread unrest, which has given rise to revolutionary ideas on marriage and has served to encourage the rapid growth of divorce. There is every reason to believe that when the present transition period has ended, marriage will be placed on a far more satisfactory basis and that divorce will tend to decrease; but meanwhile, the very rapidity of progress having created friction in every direction, the disorder incident to all social transitions becomes constantly more pronounced. Certain old restraints in married life have been removed, new ideals of marriage are in process of formation, and society, for the time being, seems to be moving onward filled with apprehension without the light of experience to guide it through new difficulties that must be faced.

An important factor in the development of modern problems of marriage and divorce has been the growth of individualism, or the doctrine of personal freedom and the rights of man, which since the dawn of Christianity has steadily expanded and developed. It was this doctrine of personal freedom that inspired the leaders of the Protestant Reformation; it led the Pilgrim Fathers to Plymouth Rock; and, at a later period, Rousseau and Jefferson felt its profound influence. To a great degree it moulded the thinking of the political leaders of the American Revolution, and the War of American Independence was practically fought to uphold the rights of the individual. Since the United States has been the centre of the stream of modern civilization, this country has

experienced the full effect of those forces which are encouraging and supporting the growth of individualism.

It is in this country that the revolt against conventional marriage, as evidenced by the increase of divorce, is most pronounced. One of its principal symptoms has been the demand for individual happiness in married life, and the right to dissolve marriage whenever its continuance renders happiness impossible. This is in direct contrast to the conventional idea, which makes the institution of marriage of higher importance than even the happiness of the individual.

There is still another aspect of the question which must be considered. Owing to the great variety of inherited opinions, laws and customs surrounding the basis of marriage, such as the righteousness or wickedness of divorce, and the propriety or impropriety of remarriage after divorce, individual ideas in this country have been given unusually wide scope. In the absence of fixed standards, individual preferences and the right to individual action have become very generally the rules of life. This branch of our subject consequently demands serious attention. As we shall see in later chapters, the tendency of most modern writers on marriage and divorce is distinctly individualistic. The right to individual freedom is emphasized by Ibsen, Bernard Shaw and Ellen Key. This assertion of individualism or the rights of men and women in love, marriage and divorce, in defiance of the conventional rules of society, is also the moving spirit in the multitude of problem novels which have appeared in recent times.

While the spread of individualism has thus had an

important influence on various aspects of marriage, its development has been further assisted by the economic progress of the last hundred years. In this period family life has completely changed as the result of a series of industrial revolutions. These may be said to have had their beginning in the latter part of the eighteenth century, when the coming of the power-loom transferred certain domestic crafts from the home to the factory, while the subsequent introduction of machinery into the field of economic production led to the creation of many new industries.

The substitution of mechanical for physical power has thus brought about a rearrangement of the forces of production and a redistribution of the population. It has also built our modern industrial cities. With the productivity of labor and capital marvelously increased, the rapid accumulation of capital has been made possible. Coincident with this, there has been the development of steam-power and the uses of electricity, the growth of the newspaper, the factory system, foreign immigration and the great migration to the West. All these tended to single out the individual from the groups to which he belonged and to treat him from the egoistic basis. Instead of his duties his rights were magnified and his difficulties were solved from that point of view.

Not only have the spread of individualism and the changes in family life served to modify popular views of marriage, but a similar influence has been exerted through the lessening importance of the home. Whereas in former times one of the principal objects of marriage was the establishment of a permanent home, this idea is

becoming less general, an increasing number of married couples having no homes in the conventional meaning of the term. It is of importance, therefore, to consider the effect of social progress on domestic life, and to ascertain to what extent it has changed traditional ideas of marriage.

During the last century the home has been affected in various ways. The progress of the Sunday school and the development of the public school system, for example, have taken away its former influence as an educational force. Not only has home life been transformed, but the home itself seems likely to disappear eventually. While this applies more especially to our larger cities, yet even in country districts the home has lost much of its former importance. The stockings that were knit, the bread that was baked, the shoes that were made and the tinkering that was done around the old homestead exist only in song and story, for the progress of the factory system has put an end to all that. Pickling, preserving, quilting and various other household industries are rapidly passing away, and the storekeeper increasingly supplies what the housewife formerly produced. Labor-saving machines and devices, such as carpet-sweepers, automatic washers, bakers, broilers, wringers, sprinklers, ironers and coal-sifters are reducing household work to a minimum even in country places, while in the cities gas and electric ranges are banishing drudgery from the kitchen.

As the result of these changes, the average American home is becoming simply a lodging-house, where a man eats his morning and evening meals, sleeping there (and occasionally stopping there on Sundays.) Occupation, edu-

cation and recreation are all furnished outside the home. In the larger cities the rise and development of the apartment hotel and other forms of coöperative housekeeping probably foreshadow the home life of the future when coöperation will become general. Not only have these developments helped to change the status of the home and the family, but every form of social activity has been complicated and a multitude of new problems are having their effect on married life, and incidentally on the growth of divorce. In other words, the present increase of divorce is due fundamentally to the deeper movements of modern civilization.

While in all departments of life there has been this constant substitution of the new for the old, with continuous advancement in every direction, there has also been evolved within the last fifty years that most important of all modern movements, the progress of women towards complete economic independence.

The economic changes in this period, which have caused the disappearance of so many home industries have forced women into wider fields of activity, causing them, in increasing numbers, to enter the various trades, commercial pursuits and professions to become self-supporting. This has not only had an important effect upon social life, but also upon the problems of marriage and divorce; for the economically independent woman is a very different being from the secluded, dependent woman of former generations, and with the advent of this new era of womanhood new ideas of marriage have arisen, while certain new ethical standards have been established.

All evidence seems to show that the economic progress

of women will steadily increase as the home lessens in importance. With the elaboration of machinery, which has so revolutionized the world's work, even the minor domestic operations are tending to pass more than ever out of woman's industrial sphere. In modern towns our carpets are beaten, our windows are cleaned and our floors are polished by machinery or extra domestic and often male labor. Young women who would otherwise have engaged in domestic work are now finding other employment, a tendency that is likely to continue. It is owing to this fact and the decreasing attractions of household work, that the servant girl problem has arisen in comparatively recent times. No longer confined to the household, woman's work finds far greater scope in factories, offices and other places of business. In the United States alone to-day there is a mighty host of feminine wage-earners, comprising over eight million girls and women of all ages, and the proportion is steadily increasing.

By convenient means of living the necessity for family life has been still further reduced, and this fact has had an important influence on marriage, for in this country and in Europe, during recent years, there has been a marked decrease of marriages in proportion to population. The boarding house, the furnished flat or the club now supply two important factors which once made many men dependent upon married life, and to a lesser degree this also applies to women.

While these changes have been in progress the standard of education and intelligence has been steadily raised among the masses, new ideas of life and its purposes tending to supplant those of former times. The com-

forts of living have been increased together with their cost, and the luxuries of a generation ago have become the necessities of to-day. Not only are the children of those who work for a daily wage clothed at a greater expense than were those of the well-to-do not so many years ago, but better and longer school education is required, while more is spent in travel, and for theatres or other amusements. The difficulty is, of course, in the adjustment of the returns of individual effort and service to the demands of social life in these days, but that is being gradually arranged.

Compared with even the last century, the present age is an age of luxury; and the demand for luxury and what seems to be an increase of extravagance among the masses, are having a serious effect on both marriage and divorce. Young men and women, for example, are less willing than were their fathers and mothers to practice economy and undergo discomfort in married life in order to establish a home. Then the fact that the average young woman can support herself tends to make her more independent and far less submissive to a husband's restrictions. Moreover, the increasing desire on the part of young women to be independent and to have careers of their own, at least prior to marriage, has given a new spirit to wifehood. This is tending to abolish the dependent position of married women with their pitiful asking for money which has hitherto been considered inseparable from woman's economic position. The woman who can earn her own living will not tolerate the wrongs or injustices in married life which women once endured. She insists upon her constitutional right to liberty and the pursuit of happiness,

and this spirit of independence has undoubtedly been one of the prime factors in the increase of divorce.

The insistence upon a greater degree of freedom in married life is not confined to women, but, to an increasing extent, is shared by both sexes, and this has had some influence in reducing the marriage rate. It must be admitted, however, that those who are deterred from marrying because of modern conditions are usually people of some culture.

In commenting on this peculiarly modern aspect of matrimony, a well-known woman writer has remarked that women of education and intelligence who are economically independent are not obliged to marry to obtain support, and what is of equal importance, "their ideas of a husband are higher, and they refuse to sacrifice them for purely financial reasons." She adds: "The men who believe in sowing wild oats cannot reconcile themselves to the new standard required by such women. Consequently, the better educated women marry less than their non-college sisters. This is, however, merely a transitional state; as the demand grows men will be revamped to meet the demands of their college sisters. But until that time comes every thinking woman, whether college or non-college, will continue to lower the marriage rate."

The millions of women who have swelled the industrial army of the nation naturally compete with the men. Coincidentally with this, the age at which a man can assume the burden of a family has been increased. Thus while women have been released from the bondage of domestic life and have gained a large degree of economic independence, the increasing cost of living and the demand

for a higher degree of comfort are making the entrance to married life much harder for the average young man who earns only a moderate salary. There are, it is true, plenty of wealthy men to-day who married on ten dollars a week, but that was at a time when necessaries cost less and no one craved luxuries that are common to-day. The bride of that period rolled up her sleeves and did the washing or worked with her husband in the field. At that time, much that appeared on the table was raised in the garden, and in many instances a dress was worn five years. Ten dollars in those days did more than twenty will do to-day, and twenty dollars a week in New York or any other large American city nowadays will not permit a man to marry and support a wife and family with any degree of comfort.

But by far the most insidious change in the conditions governing marriage has been neither economic nor industrial. The fact must be faced that whereas fifty years ago marriage meant the inevitable birth and rearing of children, it carries no such assumption to-day.* The proportion of deliberately sterile unions has increased to such an extent that it is impossible any longer to deduce from the marriage of any particular couple that they will have any children or even that they desire or intend to have any. There are various reasons for this condition. One of these may be traced to the strain of modern living, which has an injurious effect on the feminine physique

* The size of families in the United States, it is said, has steadily declined since the first census was taken in 1790. A decline in the birth rate and reduction in the size of families is, however, a worldwide phenomenon common to all civilized nations, Germany alone excepted, and is most noticeable in the city populations of all countries.

and has caused child-bearing to be dreaded by the overwrought woman of the present day.

In a large number of cases the prevention of offspring may be due to the desire for uninterrupted social life or other purely selfish reasons; but oftentimes there are more serious considerations, such as industrial inconvenience, the pinch of poverty and the fear that children could not be given the necessary education to fit them for the best in life. Children are usually an impediment to those who strive for a higher degree of living or a better position in the world, and for these reasons the limitation of offspring is becoming more common. Whatever the causes, there can be no doubt that artificial interference with the birth rate—race suicide—is becoming a serious problem and is vehemently denounced for various reasons of undisputed gravity. At the same time, those who take the opposite view have much in their favor. While childless unions are not to be commended, the limitation of offspring is another matter. The modern idea is decidedly against the large families which were once the fashion, the general opinion being that quality and not quantity should be the determining factor.

However one may be inclined to regard this question, there can be no doubt that interference with the laws of nature frequently has a serious effect. Neurologists declare, in fact, that it is largely owing to the increased avoidance of the natural consequences of married life that nervous diseases have become so prevalent among women, many who were normally healthy before marriage having afterwards become mental wrecks. This fact and the frequent dissatisfaction and discontent resulting from the

restriction of offspring, or continuance of merely sterile relations, have been prolific causes of divorce on the ground of incompatibility. Such influences have also led to irregularities on the part of husbands outside the home and thus eventually caused separations on a more serious charge.

This is but one instance of various causes of friction and irritation between married people which did not exist in former times. And while in our consideration of this subject we may have no concern with any question of morality or public policy with which it is involved, still the condition exists to an increasing extent, and its profound effect on the status of marriage cannot be questioned. It is, in fact, one of the most important problems connected with marriage at the present day, for, as a recent writer has observed: "The practical and sustaining reason for monogamy, the stability it gives to the family and its insuring the proper upbringing of children, is completely destroyed by the childless, disunited and probably shifting household now so common."

Yet while these amazing social changes have taken place, bringing in their train a host of new conditions, of which the childless union and the disappearance of the old-fashioned home are but two examples, conservatism still clings tenaciously to traditional ideas of marriage and seeks to preserve them. Derived from ancient influences of religion and custom, they survive as part of the basic tradition of an older form of society, founded upon economic conditions that have largely ceased to exist. According to these conventional ideas, married life means the establishment of a permanent home, domestic duties,

the rearing of children, the rule of the husband, and the obedience of the wife, while marriage is regarded as an indissoluble lifelong union, even if mutual affection should cease. These ideas, it is clear, do not accord with the childless union, the shifting home, the economic independence of women, the increasing resort to divorce, and a legion of other conditions which exist at the present time.

From the facts that have been presented, it must be obvious that no matter how desirable the attainment of the traditional ideals of marriage might be in some respects, it has been rendered increasingly difficult. — To attempt to force new conditions into conformity with old standards is, in fact, to repeat a familiar mistake, one akin to that of putting new wine into old bottles, and breakage is bound to follow. — That in matters of marriage to-day new conditions and old ideals should so often conflict is not surprising, nor is it strange that the question should be so often asked, whether the institution of matrimony does not need some readjustment to meet the requirements of the present age.

Conservatism, as already explained, is opposed to any modification of the conventional marriage system, and insists that it is satisfactory to most people. It may be recalled, however, that Horace Greeley once wrote a treatise on marriage entitled, "The Ideal Man and the Ideal Woman," in which he endeavored to show that a married woman ought to be contented, forgetting that the mere fact of her discontent proved that something was wrong. While the upholders of conventional ideas insist that people ought to be contented with marriage as at

present constituted, there is ample evidence that an increasing number of men and women are far from satisfied.

The astonishing fact that, at the present time, every twelfth marriage in this country ends in divorce certainly gives strong support to the arguments of those who assert that conventional ideas of marriage do not agree with modern standards. Nor does this increase of divorce necessarily mean that human nature has become worse or that sociologically vicious unions are more numerous than they were formerly. What seems more probable is that men and women of intelligence are making greater demands in the way of comfort and happiness in married life, and that the pressure due to changes in ideas and social environment is operating to render sociologically bad marriages unendurable.

That in these days men and women have become exceedingly complex is a fact which impresses most observers, and thus, with the progress of time, an increasing strain is being put upon the marriage bond. While in former times, there was, for example, little danger of a married couple developing latent tastes that might prove dissimilar, it has been remarked that to-day such instances are common and oftentimes lead to divorce. Under modern conditions, complete harmony, at the age of twenty-five, may mean open conflict twenty years later when individual ideas and preferences have had a fuller development. Men and women to-day are not only less influenced by traditional ideas, but even the influences of religion are perceptibly losing their hold on great numbers of people. Added to this, the increasing acceptance of

the civil contract theory of marriage, with a consequent lessening of any stigma attaching to divorce, has tended to remove certain restrictions once considered inseparable from married life.

In other words, people in these days are demanding a wider degree of liberty in married life; they are less tolerant of unhappiness when it can be remedied, and on this account there is an increasing resort to divorce. The difficulties which surround marriage at the present time are, therefore, extensive and complicated. No wonder, then, that so many people have applied themselves to the task of contriving remedies for these difficulties, and are even suggesting substitutes for marriage itself.

An interesting fact, which has been left to the last, but which, from its importance, must not be overlooked, concerns the relations of the sexes in this country. According to the census of 1910, the masculine population exceeded the feminine by 2,693,156, and of the population over fifteen years of age there was a masculine preponderance of 2,378,480. This condition of the population, which is peculiar to countries of comparatively recent settlement, and practically the reversal of conditions in the old world, seems to deserve a degree of consideration which it has not yet received from students of the marriage problem. If it has any meaning at all in relation to a society based on strict monogamy, it means that there are, in the United States, some two millions of males for whom there are no mates of the opposite sex.

It would seem that such a disturbance of balance between the sexes would result not only in an automatically higher status of women, considered merely as women, to-

gether with enormously increased competition for their society and coöperation as wives, but also in lending to the attitude of a proportion of them toward their suitors and husbands a degree of exaction and independence based upon the instinctive knowledge of this competition. The disruptive effect upon individual homes of a large masculine population for whose units, however desirable and necessary marriage may seem to appear to them, there exist no women at all, is written large in the returns of increasing divorce. Before elementary necessity the sanctity of the home ceases to operate as an effectual deterrent in the competition of men for women, which continues even after the marriage of the latter. It is also possible that the surplus of men has the effect of holding constantly before the individual woman, married or single, glittering opportunities of increased material prosperity as well as of greater matrimonial happiness in return for the commission of infidelity or mere delay in choosing a mate—opportunities which cannot fail to affect her imagination, and which are frequently observed to affect her conduct.

From the facts presented in this chapter it is not only clear that ideas and conditions of marriage have changed materially in the last hundred years, but that our present marriage system is still in process of development. While there is no tendency towards the abolition of marriage or a disregard of its fundamental principle, there has undoubtedly been a widespread approval of certain new ideas, of which the increasing enactment of liberal divorce laws is but one instance. It has been further shown that new ideas and conditions clash with the conventional

notions upheld by conservatism, and that this has given rise to demands for radical reforms in marriage. It has also been shown that what is called conservatism and loyalty to tradition has oftentimes consisted in an effort to prolong the ghostly existence of deceased ideas and doctrines: that radical ideas are not necessarily evil nor change always harmful. No matter how much evil may exist, we are solving our problems and are doing it by a gradual process that will eventually give us the desired results without endangering the welfare of society.

Briefly summing up the facts that have been presented, we find that there has been an increasing recognition of the civil contract theory of marriage and a growing appreciation of individual rights; that the coercive maintenance of marriage when all natural ties have been severed is meeting with increasing condemnation; and that the more general acceptance of these ideas has led to a greater resort to divorce. We have found, furthermore, that not only have ideals of marriage changed and moral standards been modified, but the advent of new social and economic conditions has transformed the home and domestic life generally. Added to this, the childless unions or limitation of offspring, later marriages, the higher cost of living, less need for home life and greater demands for individual happiness have all had their effect on marriage and incidentally on the growth of divorce.

II

WOMAN'S EMANCIPATION

ITS INFLUENCE ON FAMILY LIFE, AND ON MARRIAGE AND
DIVORCE

THE advanced American woman, the new world type of the feminine progressive, must be reckoned with in any study of marriage and divorce. While in other countries the man is the master of the household, his word is law and his happiness and comfort are the first considerations, these conditions are completely reversed in the average American home. In this country the woman is first considered in all things, and it is her wishes, ambitions and habits that give the keynote of our national life and character.

The progress of American women, socially, industrially and politically, means, therefore, far more than women's rights and women's votes. Not only is it having a profound influence on family life, but it is also having its effect on the whole sphere of matrimony. As women, to an increasing extent, are becoming self-supporting and independent, they refuse to be governed by old traditions of woman's domain and woman's duties—chiefly imposed by men—and with each advance to greater freedom they have become less tolerant of evils, in and out of marriage, which were once patiently borne. The emancipation of

women, in short, has given rise to new ideals of marriage which form a striking contrast to those of the past.

There are few subjects of greater interest, and none of higher importance, than the progress of women towards the full possession of the ballot and towards equality with men. In its recent developments it constitutes one of the greatest social revolutions the world has ever known. The object of this chapter, however, is not to discuss these achievements in detail, remarkable though they have been, but to deal more particularly with those changes in the marriage relation that have been brought about by the advent of the modern advanced woman.

In her recent book, "Why Women Are So," Mary Roberts Coolidge has traced the progress of women in the last hundred years, and has given an interesting review of conditions in this country in the middle of the nineteenth century. She has described the over-emphasized femininity of the average young woman of that period, the suppression of her intellectual faculties, the narrow scope of her life, her concentration upon domestic work, her utter lack of hygienic knowledge or even the rudiments of physiology, and her imperfect training for wifehood and motherhood.

Sixty years ago, and even later, women were dainty, "sensitiveness" was their prevailing characteristic; it was the fashion to faint on the slightest pretext; and they were warned to avoid everything *outré* in their conduct. Women then were the slaves of custom and tradition and seldom dared to step beyond the prescribed limits. Their education was restricted, they were excluded from the

professions and the business world, and were even denied certain legal rights. The average young woman had only a romantic idea of marriage and seldom gave any consideration to its more serious aspects. In married life the time-honored maxim of "love, honor and obey" was expected to be observed to an extreme degree. Man was the ruling sex, woman was the weaker or inferior, and she was not even considered capable of managing her own property if she had a husband.

In accordance with the views of mankind and the church at that time, women were compelled to be domestic whether married or single, whether by temperament maternal or celibate, whether adapted to domestic details or not. The education manacled the woman; the effect of housewifery stunted even women of exceptional ability who conscientiously pinched themselves to fit their sphere. As for a young woman's going out into the world to earn her own living and working in an office with men, unchaperoned, such an idea would have been incredible a few decades ago. In those days, the whole idea of young women was to marry for a home, and an old maid was regarded with pity or contempt.

The contrast between the modern woman and her predecessor is strikingly revealed by the domestic literature of the past. As an illustration of this, a recent writer has discussed the contents of the "Household Book" of 1847, which was once a cherished possession of many American families. The low value of the domesticated woman's time in 1847 may be inferred from the number of hours which the book proposes she should fritter away in petty home industries. Among other things, instructions are

given for the making of a necklace of rose pearls from the petals of red roses, which are to be rolled into beads and dried. "They are very hard," says the book, "and are susceptible of a fine polish, and retain the fragrance of the flower." Such were the ladylike occupations in vogue in 1847.

To-day can any modern young woman be imagined patient enough or leisured enough to spend hours in the slow manufacture of a rose pearl necklace—unless indeed she saw her way to selling it afterwards at a high price? The lady of 1847, on the contrary, would have recoiled in horror from the idea of making money by it. Thus do the points of view of one century come imperceptibly to reverse those of another, and the maker of "rose pearls" and boxes adorned with transferred prints is replaced by the typist, the secretary, the hospital almoner, or the member of a Suffrage Committee.

The social and economic progress of the last fifty years has wrought a complete change in conditions and notions. With the removal of the domestic crafts from the household, and the consequent lessening of the individual household duties, women have lost their chance to do their old work in the old ways, and it follows that vast numbers must either find work outside the home or live in idleness. As a result of these changes, eight million American women are supporting themselves to-day in the various industries and professions, and each year finds their numbers increasing.

Modern progress is thus abolishing the old idea that all women should be domesticated, whereas many women who make excellent wives and mothers are not domes-

tically inclined. That any woman should be regarded with disfavor because she dislikes the domestic sphere does not accord with the spirit of this age. In fact, it is difficult to understand why the less desirable labors should have been so long and insistently held to be woman's natural duty, and that the wife of a man of limited means should be encouraged to pass her time in a kitchen, handling pots and pans, washing dishes, sweeping, cleaning and scrubbing. It is not surprising that so many intelligent young married women are refusing to perform these so-called domestic duties and prefer to work in an office.

Matrimony is consequently attracting young women far less than it formerly did. The modern girl, if she is a working girl, does not have to marry for a home. She can probably make as good a home as the average young man can offer her, and not be troubled with a husband to restrain her freedom. She knows, moreover, that in keeping house for a husband she would probably have to work harder than she does in a business office, and this fact also makes her less eager to marry than the young woman of former times. The unmarried woman of middle age, often known as a bachelor woman, is not considered to be entitled to any more pity than the unmarried male. This generation of American women, in short, is the first in the world who were not compelled to depend on matrimony for their support.

With the progress of co-education, advanced women of the present day are insisting on the abolition of every vestige of the system which makes women economically dependent upon man. The girl, they insist, should be

reared, educated and trained to regard marriage as an incident of her life instead of its being the principal object of her existence. The duties of wifehood and motherhood, they argue, must eventually be placed on the same basis as husbandhood and fatherhood. A boy is trained to regard marriage as a secondary consideration, and the man does not abandon his art, trade or profession to devote his time to his home, wife and children.

Under modern conditions it is undoubtedly becoming more necessary than ever for women to enter some outside pursuit before marriage, and in many cases to continue in it after marriage, in order to co-operate in providing the household expenses. Therefore, the time is certain to come when young women will cease to enter business life with the idea of remaining in it for a few years, and then leaving it for marriage. Those who employ women complain that a large proportion of them have no decision, cannot act for themselves and waste time in trivialities; that they take the minute instead of the broad view, lack system and do not work in an orderly way. When women, as a whole, enter business life on the same basis as men, and come to regard marriage simply as an incident in their lives, these temporary defects will disappear, while general efficiency will be vastly increased.

There is still another view of marriage that is entirely of recent origin. Whereas in former times it was considered proper for a young woman to marry for a home and support even if she lived in idleness afterwards, the enlightened opinion of this age is distinctly opposed to such an idea of marriage. Women of the so-called "lady" class, who regard marriage as an economic

vocation and give no adequate return for the support they receive are now severely condemned by writers of their own sex.

"Such women," says one writer, "with the passing of the occupation in the home, have come to regard economic dependence upon men as a necessary consequence. With them marriage has become a species of purchase-contract, in which the woman barters her sex capital to a man in exchange for life support. Such women differ in no essential from the kept woman, unless we have so low an estimate of the marriage state that we call the ceremony the essence and a carelessly misplaced 'respectability' the final test of marriage morals." Among those who have written on this subject is Olive Schreiner, who has shown that a distinctly evil influence is exerted by those women who marry solely to obtain support and thus be enabled to lead idle lives. Such women she has called "parasite women," and the existence of such parasitism, she declares, is a serious menace to society.

Not only are advanced women condemning marriages of this description, but they are taking a thoroughly practical view of what marriage should be. In contrast with the old romantic ideas, which so frequently led to disaster, there is, in these days, a growing belief that the chief object of marriage should be to increase the sum of human efficiency. - It is being realized that if a husband or a wife in any way diminishes the efficiency of the other, such a union is socially injurious and should be dissolved. It is the realization of this fact that is causing intelligent, self-supporting women to exercise great care in their selection of life partners and to choose only such men as

will bring into their married life both intellectual and moral sympathy.

The modern, progressive woman is thus unconsciously developing a new type of man; for such a woman will assuredly demand an advanced mate. Women are also introducing new and higher ideals of marriage, to which men will be eventually forced to conform. On this point it has been remarked that, "unlike the secluded, ignorant young creatures of former times who became wives before they were physically grown, the modern young woman sees, fears and questions the facts of sex, and by so much as she does so will wish to know more of any man who offers himself to be the father of her children." This endeavor of woman to readjust herself to new conditions of life will, as Olive Schreiner has predicted, lead to a closer, more permanent, more emotional and intellectually complete relation between the individual man and woman.

Thus it is clear that not only has the position of women, in and out of marriage, undergone a complete change in the last fifty years, but coincidentally there has been an evolution of new ideals of marriage and its purposes. It is true that large numbers of conservative women, governed by conventional ideas, still believe that woman should find her work at home, and are inclined to regard mankind as the superior sex. Consequently, there are anti-suffragists, who are opposed to women voting, and are convinced that men alone should be entrusted with the management of public affairs. Others are anti-coeducational, believing that girls should be educated in schools of their own, in order to receive the best training of mind and heart. Others oppose the economic independence of

women, believing that it is best for women to lean upon men, and for men to be stiffened into duty by such dependence. All these conservative women are apparently inspired by the fear that the new woman may prove less attractive, less winning and less adapted to motherhood than the woman of former times. And it is not surprising that so many women should still cling to conventional ideas. There are plenty of conservative men who believe in the good old times, and who are convinced that almost every social advance means destruction.

The assertion is sometimes made that the present women's movement, and other uprisings of the sex, are merely fads of the times which will eventually disappear. It is argued that the efforts of women to abandon the domestic sphere, and to enter fields of industry hitherto occupied by men, are unnatural and can only end in failure. But in spite of these arguments, the revolt of women against the bondage of tradition is by no means of recent origin; for history has shown that in all ages there have been exceptional women who have pointed the way to wider liberty for their sex. This spirit was manifested in this country even in the earliest days when, as it has been said, the Pilgrim Mothers shared ideas of freedom with Pilgrim Fathers.

It was in the early Colonial period that Anne Hutchinson, the first American woman preacher, astounded the Puritans by her radical views. Not only did she insist on her right to preach, but she boldly denied the teachings of St. Paul regarding the subjection of woman. For her defiance of convention she was eventually banished from the Colony of Massachusetts Bay. Of the same

spirit was Margaret Brent of Maryland, the first avowed suffragist in this country, who demanded her right as a taxpayer, to sit in the Legislative Council and cast a vote. Although this privilege was denied, she showed a new spirit of womanhood which was destined to have important results in later times.

It was largely owing to the possession of a similar spirit by American wives and mothers that the Revolution of 1776 achieved its ends. Many women at that time not only had a clear knowledge of the principles of liberty, but induced the men at the head of affairs to make a practical application of them. Abigail Adams, wife of John Adams, afterwards President of the United States, begged her husband to use his influence with the other leaders of the Revolution in having the rights of woman recognized as well as the rights of man. These ideas of American women found approval in France, for shortly before the French Revolution the philosopher, Condorcet, pleaded eloquently for the rights of woman in his essay, "On the Admission of Women to Citizenship," and he was not alone among eminent Frenchmen of that time in advocating the emancipation of women.

It was at this period, so far as practical results are concerned, that the ideas of women's rights and the revolt against traditional ideas of marriage had their beginning. Such subjects then began to engage the thought of the world, and were much discussed. This was the age of Rousseau and other theorists of the same school, whose ideas on sex relations, however, were guided by purely philosophic reasoning, while the arguments of modern radical writers on this subject are based almost entirely

on scientific grounds. But even Rousseau, although radical enough in most respects, took a remarkably conservative view in regard to the upbringing of girls. In one of his essays he expressed the popular idea of his age which, strangely enough, continued until comparatively recent times. "The education of women," he said, "should always bear relation to male requirements. It is the duty of women to please and be helpful to us, to earn our love and approbation, to advise, console and assist in making our path in life easy and agreeable. Such is the duty of women in all times, and they should be so taught in infancy."

It was by taking a stand in direct opposition to this idea of feminine subjection that Mary Wollstonecraft, an advanced woman, made a sensation in the latter part of the eighteenth century, when she published her radical views on love and marriage. A member of a prominent English family, she was obliged by early misfortunes to earn her living as a school teacher, and while so engaged she became acquainted with Dr. Johnson. He took a warm interest in her work, and it was with his assistance that she obtained a position with a London publishing firm as literary adviser and translator. She eventually went to Paris where she lived during the stirring scenes of the Revolution.

The first work to bring her into public notice was her "Vindication of the Rights of Man," written in answer to Edmund Burke's "Reflections on the Revolution in France." This was followed, shortly after, by her "Vindication of the Rights of Woman," an American edition of which was published in Philadelphia.

In her "Vindication of the Rights of Woman," Mary Wollstonecraft gave utterance to views more than a century in advance of her time. In an age when women were the slaves of convention, when their subjection to their husbands was upheld by the church and enforced by the laws of England, she boldly advanced ideas completely at variance with these and other traditional notions. Not only did she urge the co-education of the sexes, but she insisted that until this was achieved there could be no intellectual and real companionship between men and women, and any lower relation she regarded as degrading to both. Rousseau had said: "Educate women like men and the more they resemble our sex the less power they will have over us." To this Mary Wollstonecraft replied: "That is the plan I am aiming at. I don't wish them to have power over you, but over themselves."

Convinced that the intellectual side of life is the most important, Mary Wollstonecraft condemned all conventional ideas which tend to degrade marriage. Like all sensible people, she realized that the successful marriage always depends upon something more substantial than mere physical attraction or passion. As she remarked, "Love from its very nature must be transitory. To seek for a secret that would render it constant would be as wild a search as for the philosopher's stone or the grand panacea, and the discovery would be equally useless and pernicious to mankind. . . . In order to fulfill the duties of life, and be able to pursue with vigor the various employments which form the moral character, the master and mistress of a family should not continue to love each other with passion. The mind that has never

been engrossed by one object wants vigor, but if it can long do so it is weak."

Mary Wollstonecraft was fully the equal of Madame de Staël in originality and power, though even more radical in her views. She made an eloquent plea for the abolition of sex as the dividing line of society. Logically speaking, she argued, women have no rights to demand, because they are human beings the same as men with all the rights and duties pertaining thereto. Like the advanced women of the present age, she protested against the oversexed condition of most women, their confinement to household duties and the narrow scope of their life. She insisted that women could never develop until their complete economic independence was achieved.

"Mary Wollstonecraft," says a recent writer, "was not only far in advance of the women of her own time, but even to-day her call has not yet been heeded except by a few who think. She remains in front, and the modern suffrage movement can only follow her lead. She wrote the haughtiest assertions of sexual freedom that have ever been written." This remarkable woman even added a practical assertion of freedom in the case of Captain Imlay, an American, with whom she lived for some years, but in the end she deserted him, and ultimately she and William Godwin—two of the most stubborn intellectual rebels who ever lived—were forced to surrender to the right of their child to be born in wedlock.

Mary Wollstonecraft was one of the first women writers to discuss the right of men and women to be properly mated before marriage and even afterwards if matrimony, through incompatibility or other causes,

proved a failure. She was therefore strongly in favor of some means of dissolving the marriage bond when individual happiness demanded freedom.

At a later period, George Sand took a similar stand in regard to the freedom of marriage. She had the courage to assert that when two human beings wish to be together no bond is needed to hold them; that when they do not wish it, to hold them together by force is a violation of their human rights and human dignity. As subsequent chapters will show, this doctrine has been elaborated and emphasized by various modern writers.

While these and other protests against conventional ideas of marriage gave no impetus to the women's movement, which had its beginning in this country, yet they serve to show that the new spirit of womanhood, with its demand for independence and equal privileges, had been developing for many generations. This demand made itself felt in the early part of the last century when the first American movement was started with the avowed purpose of sweeping away traditional ideas concerning the status of women.

At that time it was considered improper for women to address public meetings or take any other active part in public affairs. Every attempt of women to escape from conventional rules excited indignant protests. When Susan B. Anthony, for example, addressed a teachers' convention in New York, and urged that girls should be allowed the same educational advantages as boys, she was congratulated by the president of the convention upon the force and eloquence of her remarks. "But, let me tell you, Miss Anthony," he added, "I would rather follow

my wife or my daughter to the cemetery than to have her stand up here as you did to-night and speak in public."

Even in charitable work, women met with bitter opposition. When Mrs. Sarah Platt Doremus led the movement which exposed the barbarous treatment of the insane and town poor, and invaded prisons to reveal their horrors, the women who took part in this work were regarded as shameless. When Dorothea Dix engaged in a similar work of reform she was said to be unfeminine.

In spite of these ideas, which were even more pronounced in other countries, a party of American women went to London in 1840 to attend an international convention which was held to protest against slavery. Among them were Lucretia Mott and Elizabeth Cady Stanton. The appearance of the American women delegates excited severe criticism, their venturing into a gathering of men being regarded as a gross breach of propriety. Only after much argument were they even permitted to attend the convention, while their request to be allowed to speak at the meetings was indignantly refused. It was this experience which led these two famous American women to become such ardent advocates of women's rights, and it was largely through their influence in this country that women's sphere was broadened and women's rights and opportunities were fairly established.

In 1848 these progressive women called the first women's rights convention, which was held at Seneca Falls, N. Y., and although much ridiculed at the time, it was an overwhelming success. At this convention resolutions were adopted, declaring that "woman is man's

equal, and was intended to be so by the Creator, and the highest good of the race demands that she should be recognized as such." The right of women to hold public offices was insisted upon. At that time the American laws, largely an inheritance from the English law, were grossly unjust to women. Not only were their property rights unequal to those of men, but their rights to the guardianship of their own children were ignored.

From 1848 to the present day the women's movement has grown steadily in the United States, increasing everywhere in strength and influence. In every State of the Union agitations were started for equality of political rights; and some of the largest petitions ever presented to Congress, and to State Legislatures, were those of women asking for political enfranchisement. Most of the amendments to State and national laws, in favor of women, have been the direct results of this movement, and through its influence many wholesome reforms have been effected. As the result of the women's rights movement, and its successor, the suffrage movement, women have already gained full suffrage rights in twelve States —Wyoming, Colorado, Idaho, Utah, Washington, California, Oregon, Kansas, Arizona, Illinois, Montana, Nevada, and also in Alaska, while partial suffrage has been granted in twenty-four other States.

In some of the States in which women vote they have helped to secure the enactment of laws giving women absolute rights over their own property and permitting mothers to have equal guardianship with the fathers of children. Other legislation influenced by women has included: the raising of the age of protection of young girls

from fifteen to eighteen years, the enactment of laws to prevent cruelty to children, forbidding their employment in certain industries, and providing for the proper care of those destitute or dependent. In Utah the votes of women secured the passage of a law providing for systematic instruction in physiology and sex hygiene in the public schools.

Wherever American women have gained political rights they have turned their attention to the laws of marriage and divorce, which in some instances need revision. It is quite possible that defects which exist in the laws of some States are due to the fact that women have taken no part in the law-making. Women are beginning to realize that they should coöperate in framing all laws that affect their sex, and that such laws, when drawn up solely from the masculine point of view, are not likely to be satisfactory to both men and women.

As already mentioned, it was once the rule in this country that by marriage the wife's control over her own property passed to that of her husband. He was charged with her support and, as compensation, was given authority over her property and person. In two generations these conditions have been radically changed, and it is now becoming the rule throughout the United States that the wife can hold and dispose of property without her husband's interference or consent. Women's property rights, however, are not yet fully protected in certain States, a fact which has been emphasized by Mrs. Rheta Childe Dorr in her book, "What Eight Million Women Want." As she points out, in all the older States the property rights of women are now fairly guaranteed; but the proud

boast that no American woman is the slave of her husband will have to be modified when it is known that in at least seventeen States these rights are still denied. "In some States," she remarks, "a married woman cannot engage in business without the permission of the courts. The husband absolutely controls the wife's property in eight States. In several States women are barred from certain professions and cannot hold elective offices. In most of the States children are legally supposed to belong to their fathers, and can be given away or willed away from the mother."

Another barbarous legal relic—an inheritance from the English common law—exists in New York State where, according to the recent ruling of one of the Supreme Court judges, a wife has no right to her own earnings except by specific agreement with her husband, and not always then. "The husband," it was declared, "is always entitled to all the earnings of his wife as well as her services during marriage."

Fifty years ago such a decision would have made small stir, but to-day it is regarded differently, and it has met with widespread denunciation. In commenting on the decision, the *New York World* said:

"The common-law, upon which all our law is based, looked upon marriage as an indissoluble union. Man and wife threw in their lots and fortunes together. But the man took the lasting financial and legal rights and responsibilities of the partnership. Society took this for granted; religion approved. We have changed all that. Marriage is no longer thought of as indissoluble. Marriage is as dissolvable as any other contract—rather more so. Public opinion and feminine emancipation have made marriage a new and modern institution. Religion

has eased up on it. Yet the law cannot seem to get over treating marriage as if it were the old kind. It only proves how law lags behind facts, and what a sore trial to progress are antiquated ideas that refuse to wear current styles."

That women will cause the revision of such laws before long there is not the slightest doubt; that they have been retained in their present form so long simply illustrates the tenacity with which men have clung to traditional ideas. While men have been accustomed to retain certain notions and to uphold certain conditions from sheer conservatism, women have fewer of these conventions to discard. That they should give such enthusiastic approval to new ideals is—as Mrs. Dorr has remarked—merely evidence of their intellectual youth. Therefore, when they give their support to a new social theory—and this applies to the revision of unjust laws—it is only natural that they should choose the most modern, progressive and idealistic. It is a significant fact that among progressive women are to be found the most earnest advocates of wholesome reforms in the laws of marriage and divorce.

Not only are women demanding the right to assist in making the laws, but also in administering them. In an article entitled "Women and the Laws," which appeared in the *New York Sun* recently the writer, a woman, insisted that her sex should have the right to serve on juries in cases where women are concerned. "Would men," she asked, "consent to be judged by a jury of women? They would consider such a suggestion absurd. But are not women quite as capable of passing judgment on men's affairs as men are on women's?" The writer continued:

"Personally I believe in mixed juries, made up of citizens—men and women. Take, for instance, a divorce case. A man judge tries it. Suppose the defendant is a man, as frequently happens, isn't it perfectly natural that the man who is judging the case, and those who sit in the jury box should have sympathy with him, and palliate and excuse him as far as possible? Might not they require more evidence, perhaps, to prove the charge than they would if a woman were the defendant? According to the decisions handed down by various judges, the man in such cases more often gets the benefit of the doubt than does the woman. On the other hand, men are often too lenient with women—that is, they are inclined to be unduly susceptible to the emotional appeal of a pretty, attractive woman, although a dull, unattractive personality might not move them.

"It seems to me that women jurors would be more likely to judge a case on its merits; they would be less influenced by personality. The ideas of men and women are apt to differ as to what is and what is not important. It is the intent to do wrong that governs in the law. Can a man know what a woman intended to do; can he read her mind any more correctly than she can read his? Men always assert that they do not understand women; then why should they judge them?" *E. A. T.*

As women are advancing politically, the old arguments against their ability to take part in public life are losing their force, and this is especially the case as it becomes more apparent that wherever women have voted they have bettered conditions. Not only are American women taking a foremost part in the common duties of the community, such as the care and protection of children, their schooling and physical training, the regulation of morals, health and cleanliness; but largely through woman's influence certain laws are being enacted which have a direct bearing on the home and the family such as

the supervision of food, the inspection of buildings, the prevention of disease, and the regulation of drainage and sanitation.

It has been remarked that with the lessening of the individual household duties, the decrease in the size of families, and the increased efficiency and capacity of women, the alert, progressive American woman of to-day finds her housekeeping instinct extending to the municipality, and her instinct of motherhood to the children of the whole nation. She is still maternal and will ever remain so, and the home is still her sphere, but its influence has been widely extended. Our juvenile courts, our vacation schools and homes for delinquents, our child-labor laws, the laws forbidding the sale of liquor and tobacco to minors, the laws requiring the physical examination of school children, and many others of like character, must all be credited to the work of women. It is they who initiated them and secured their adoption.

A further illustration of this fact was afforded recently when the New York Legislature passed a bill providing for pensions to widowed mothers requiring assistance in order to rear their children properly. The passage of this bill was largely due to the efforts of the women of the State, headed by Mrs. William Randolph Hearst, Mrs. Hannah Einstein, Mrs. William Grant Brown, Sophie Irene Loeb, and Mrs. Samuel Koenig.

It may be added that during the last two years acts of this description, designed to compensate mothers, have been passed by the Legislatures of Colorado, Delaware, Illinois, Iowa, Massachusetts, Minnesota, Oregon and Washington. The idea is to provide aid, partly from the

State and partly from the community, to enable the mother to keep her children together and bring them up under her personal care. The general principle involved is to afford aid proportioned to the age and number of dependent children, until they reach the age when permitted by law to begin work. The fear that this will encourage desertion on the part of husbands, or collusion and deceit, is a drawback to this plan, but not a sufficient reason for refusing its manifest help to retaining unbroken the integrity of the family. The distribution of the financial burden is a problem to be carefully worked out; but in many cases it is better to spend the State's money for mother-care than for the unnatural life of the crowded institution.

With women taking an active part in framing such laws as these, and extending their activities in other important directions, we are thus witnessing, to-day, not only an evolution, but a revolution in women's social and economic status. While fifty years ago there was but one women's college in the United States, there are now a hundred and fifty, besides a host of co-educational institutions. Seventy per cent. of the graduates of our high schools are girls, and to-day there are more women preparing for college than there are men. It is a significant fact that of 12,590 degrees of A.B. conferred in the United States in 1910, women took 44.1 per cent.

The American women's movement has not only been largely instrumental in giving rise to suffrage movements in other countries, but it has also given encouragement to co-educational movements abroad. In England the establishment of Newnham and Girton colleges has opened Oxford and Cambridge to women, while at the newer uni-

versities of London, Manchester, Leeds and Liverpool, equal opportunities have been afforded. In Germany the movement is also spreading, over two thousand women having been enrolled in the universities of that country in spite of the Emperor's firm belief that woman's sphere should be limited to kitchen, church and children.

The economic independence that women are achieving and their entrance into business and professional life would have been inconceivable in an earlier generation. Even at the present day, there are many conservative people who seem unable to realize that if women were to withdraw from industrial work and return to the conditions of fifty years ago the nation would collapse. The business and commercial world would be thrown into a state of chaos. Sixty years ago, teaching, sewing, house-keeping and other domestic pursuits were the only occupations open to women. In 1850 there were in the United States only seven employments available for women apart from domestic work. The last census showed that out of 369 industrial groups there were only nine in which women were not engaged.

Sixty years ago there was not a woman physician in the United States; to-day there are more than eight thousand of them. Then there was not a woman lawyer; to-day there are nearly three thousand. At that time there was not a woman clergyman; to-day there are nearly six thousand. It is the same with all the other professions and technical callings. The first women medical students were greeted with jeers and insults. Lawyers protested against the admission of women to the bar. The mere suggestion of a woman clergyman was regarded as little short of blas-

phemy. The radical ideas of the mid-nineteenth century have become the conservative ideas of to-day.

Fifty years ago, in the United States, there was not a woman's club in existence. To-day there are more than eight thousand of them, with a total membership exceeding two million women. This has proved the fallacy of the argument, made a generation or two ago, that women had no capacity for organization or other collective work. While the literary and social clubs of the past answered their purpose when women were just emerging from the old restrictive traditions, the women's clubs of the present day usually have more practical objects in view. In addition to a host of suffrage and other political organizations, there are various bodies engaged in furthering important public movements, such as the Women's Municipal League, the Public Education Association, the Health Protective Association and the Pure Milk Society. In giving support to such movements women throughout the country have performed a valuable public service.

The progress of the women's movement and the new status of women in general has given rise to a special field of literature which is exerting an important influence on social life. To-day the works of certain women writers who have dealt courageously with sex problems and modern conditions of marriage are read by millions of women throughout the world. This forms a striking contrast to the public attitude less than forty years ago, when two American women who had the courage to advance similar ideas were greeted with ridicule and abuse.

It was in the early 'seventies that Tennessee Claflin, later Lady Cook, and her sister, Mrs. Victoria Woodhull,

afterwards Mrs. Frank P. Martin, started their movement for sexual freedom. To a great extent they were pioneers of American business women. At a time when women were rarely seen in business offices, they opened a banking and brokerage business in New York on a solid basis, and competed successfully with men. While thus engaged, they devoted all their spare time to the furtherance of their ideas concerning women's rights and marriage reform. They called a national convention which made a great stir, they lectured extensively, and they also published a magazine to support their movement. Marriage, they declared, should be made much harder to contract and divorce should be granted for any reasonable cause. They not only demanded an equal code of morals for both sexes, but insisted that any marriage in which the natural bond of affection had been severed should be dissolved, because its continuance was little better than open promiscuity.

While these radical ideas scandalized the public at the time, yet to-day they have been so widely accepted that they have almost ceased to be radical. As a recent writer has remarked, while certain other ideas which were thus presented in the 'seventies were wild and illogical, these progressive women were, nevertheless, in advance of their time in regard to various reforms which they advocated.

For urging the suppression of the social evil and attacking abuses in plain language—which would have received every encouragement at the present day—these advanced women were charged by the Federal authorities with circulating indecent literature. They were convicted

and imprisoned. Their magazine was suppressed. Such a scandal resulted from this that their names were smirched and their business was ruined. Mrs. Woodhull and her sister were excluded from hotels and were socially ostracised. The crime these women committed consisted in attacking the social evil in plain terms, exposing the iniquities of the white slave traffic and denouncing men high in society who profited by it. They also exposed corruption in the national, state and municipal governments. They were, in fact, the first American "muck-rakers," but instead of receiving the praise and profits which most successful "muck-rakers" obtain in these days, they were imprisoned and disgraced.

From this brief review, it is clear that not only has the position of women in social life changed completely in the last fifty years, but the general ideas and conditions of married life have also been radically altered. The legions of self-supporting women, with their ideas of personal liberty and individual rights, are gradually leavening the whole mass of womankind and spreading new and better ideals of marriage.

Women, very properly, are losing their respect for the matrimonial maxim which commands them to love, honor and obey under any conditions. They are not only demanding an equal share of liberty with men, but an equal code of morals. They will no longer tolerate injustices and abuses in married life which many women formerly endured. The unhappily married woman, without private means, is no longer obliged to face the alternative of starvation or yielding to the tyranny of a husband whose con-

duct is a menace to her health and happiness. Divorce, when obtained on satisfactory grounds, is no longer considered a disgrace; and society is beginning to realize that the idea of coercing any woman into continuing a relationship which becomes intolerable is not only barbarous but immoral. The removal of restraints, due to economic opportunities and the new social conscience of womankind, is the chief reason for the increased resort of women to statutory grounds for the dissolution of the marriage bond.

The entrance of women into industrial and professional pursuits, the fact that both sexes marry later in life, and the advent of new ideas of marriage, have all combined in giving rise to the limitation of offspring and the childless unions to which reference has been made in the preceding chapter. And in this connection it may be added, that sweeping accusations have been made against the advanced women of the present age, who have been accused of shirking maternity, neglecting their homes and leading the way to national decadence. It is significant, however, that while certain men have written much on these subjects and have urged a revival of the large families, such as were common fifty years ago, the majority of women writers take an entirely different view.

In her recent book, Mrs. Coolidge has given a vivid description of the typical large American family of the early part of the last century. Incidentally, she has revealed the horrors of repeated child-bearing and its destructive effects. Statistics of the period, as she remarks, do not furnish any trustworthy information of the death rate of married women, but indirectly the family histories

of the time record an unusual number of second and even third wives. "There is abundant evidence," she adds, "that the large family of which we read so much was often produced at the cost of the first wife's life. In fact, we need only take account of the increasing healthfulness of middle-aged women to infer that many men, as well as women, have begun to count the cost of parenthood as measured by a rising standard of child quality and child character."

From the facts presented in this chapter, we find that in less than half a century certain aspects of marriage have been completely transformed through the emancipation and progress of women, that women themselves have changed; that traditional ideas of woman's seclusion in the home have been swept away, and with them has gone the time-honored notion that all women, married or unmarried, should be domesticated. Other important changes may be briefly summarized as follows:

Women are taking a foremost part in public life and are gradually obtaining their full political rights. Their influence on legislation is bringing about desirable reforms in certain laws, including those of marriage and divorce.

Eight million women are engaged in industries and professions in the United States, their numbers constantly increasing. The economic independence of women is becoming more general and there is increasing condemnation of the married woman who leads an idle, unproductive life.

Certain conventional notions of womanly propriety are losing much of their influence as women gain a greater degree of freedom. Old standards are being replaced by new.

Woman's emancipation has introduced new ideals of marriage and its purposes. The tendency is towards later marriages.

Smaller families, through limitation of offspring, are becoming the rule.

Divorce is no longer considered a disgrace. Women therefore refuse to submit to injustices formerly endured in married life. This is one of the great causes of increasing divorce.

These new conceptions of woman's place in the world differ greatly from the former ideas of wife and mother, which fettered women to domestic life and prevented their wider development. Against this narrow view of their sex intelligent women have properly rebelled. New ideas and conditions, and the influence of the new school of feminine literature, have also undoubtedly done much to increase the unrest which exists among women to-day. For women, as well as men, have been deeply affected by those social transitions and complexities of modern life discussed in the preceding chapter. There are greater dangers of discord in their married life, they are apt to become dissatisfied, and thus it is that more marriages than ever are ending in failure. The women of former

generations were probably just as much dissatisfied as are many women to-day with their larger measure of freedom; but they knew that it was useless to protest against the conditions then existing, which were therefore patiently endured.

A few decades hence, when men and women understand each other better, realize properly the duties and responsibilities of life and what tends to give true happiness, both sexes will be happier and far more contented. Marriage will then be placed on a firmer and sounder basis, and with the establishment of better conditions there will disappear much of the strife which, at present, leads so often to divorce.

III

THE NEW MORALITY

SOME STARTLING MODERN IDEAS WHICH ARE INFLUENCING
THE WORLD

IN the preceding chapters reference has been made to the new school of literature, which has attacked various conventional features of marriage and advocated revolutionary ideas concerning the relations of the sexes. It is represented by the works of some well-known writers of pronounced radical views, who have boldly demanded certain rights for men and women, in and out of marriage, which are completely at variance with conventional rules of morality. Much has been written on this subject in recent years, and in this way there has grown up what may be termed the literature of the revolt against the present marriage system. It is not only the result, but to some extent it is also the cause of a widespread dissatisfaction with existing conditions.

Women are the principal readers of this literature; many of the books included in it have had an enormous circulation. And they are undoubtedly responsible for a large degree of that unrest among women which is so vividly reflected in married life at the present day. It is true that books of this description have been severely condemned by conservative opinion; but those who take

the opposite view are convinced that eventually certain radical ideas advanced by modern writers will find general acceptance. For the purpose of our study it is important, therefore, to trace the rise and progress of this new type of literature, and to examine some of the principles to which it has given approval.

Strange as it may seem, the main impulse for these modern attacks on conventional marriage has not been derived from French literature, as it was early in the last century, but is rather of Germanic or Scandinavian origin. The dramatic works of Henrik Ibsen, especially, have had a profound influence on the world's thought and have done much to encourage the uprising against certain phases of conventional marriage. A mere list of this author's works which deal with the marriage problem would be formidable. Of these, "A Doll's House" is probably the most widely known, but "The Lady from the Sea," "Ghosts," and several others have also made a deep impression on the thinking classes. Among Scandinavian writers Georg Brandes has also appeared as the enemy of traditional morality and the late August Strindberg produced some remarkable dramatic works dealing with the sex problem from an equally radical point of view.

Not only in northern Europe, but throughout the world, the works of these Scandinavian authors are having an increasing influence. In France Ibsenism has become a cult, and Ibsen's social theories are presented on the stage by many of the younger dramatists. In Germany Gerhart Hauptmann is a follower of Ibsen as are several other well-known novelists and dramatic

writers. It was in Germany, in fact, that this school of writers had its origin. As far back as 1834 Ludolf Wienberg published in Berlin his book entitled "An Æsthetic Campaign," in which he attacked tradition in art, church and society and pleaded for greater liberty in the laws regulating the union and separation of the sexes. This work was followed by many others of the same type written by men of pronounced radical views, notably Karl Gutzkow, whose novel, "Wally," made a great stir at the time. Gutzkow insisted that marriage was a purely civil and private contract and ridiculed the "water-soup weddings, the sordid procreation of children and the struggle for mouldy bread," the cold prose of the ordinary marriage. Throughout the book he expressed his hatred of existing sexual morality. The increase of books of this kind and their revolutionary principles caused the Federal Diet of the German Confederation in 1835 to pass a resolution strongly condemning them and threatening the authors and publishers with prosecution.

The revolutionary doctrines of these early German writers found their climax in the works of Ibsen, who was the most pronounced individualist and social anarchist that the literary world of the last century produced. Individualism was the key-note of all his works, the only important thing in his opinion being that man should save himself. Whatever restricted his liberty, whether through the State, church or the family, must be regarded as an enemy. He believed that real freedom could never be obtained until the State was abolished and that alone could lead to the greatest of all revolutions, the regeneration of the spirit of man.

Like his predecessors of the Germanic school, Ibsen made a fierce attack on the traditions, customs and doctrines which surround marriage as it exists to-day. His conception of love and marriage was, that love is a passion which can maintain itself only in pursuit, and that marriage is its sentence of death. Consequently, he was in complete accord with the romantic school of writers in declaring that love is happiness, and also in his protest against the civil restrictions thrown about love and marriage. He also argued that the only way to maintain true love is to abstain from marriage, while for a fruitful marriage there must be an absence of love, an idea completely at variance with the orthodox doctrine.

Ibsen also had other theories concerning love and marriage. Although he was an idealist and a stern critic, he was nevertheless a practical man. As an idealist, in "Love's Comedy," he places love far above degrading passion, but in "A Doll's House," "Ghosts," and "The Lady from the Sea" he reveals himself as a merciless critic dealing with human weaknesses. As he believed that the identity of the individual was absorbed by the State, so in marriage he discovered pitfalls from which the individual could not escape when once he entered.

In "A Doll's House" Ibsen deals with the struggles of a woman to break away from the family and its conventions and free herself from its bondage. While her home had been apparently ideal, it had never been a happy one. At last, a painful experience makes her suddenly realize that she has never understood life, never developed her powers, and that having been smothered by convention and its institutions she has never become a full-rounded

personality. "Our house," she says to her husband, in the last act, "has been nothing but a playroom. Here I have been your doll wife, and the children in their turn have been my dolls. I thought it fun when you played with me, just as the children did when I played with them." But now, she declares, all this is over. "I must try to educate myself—make myself a woman."

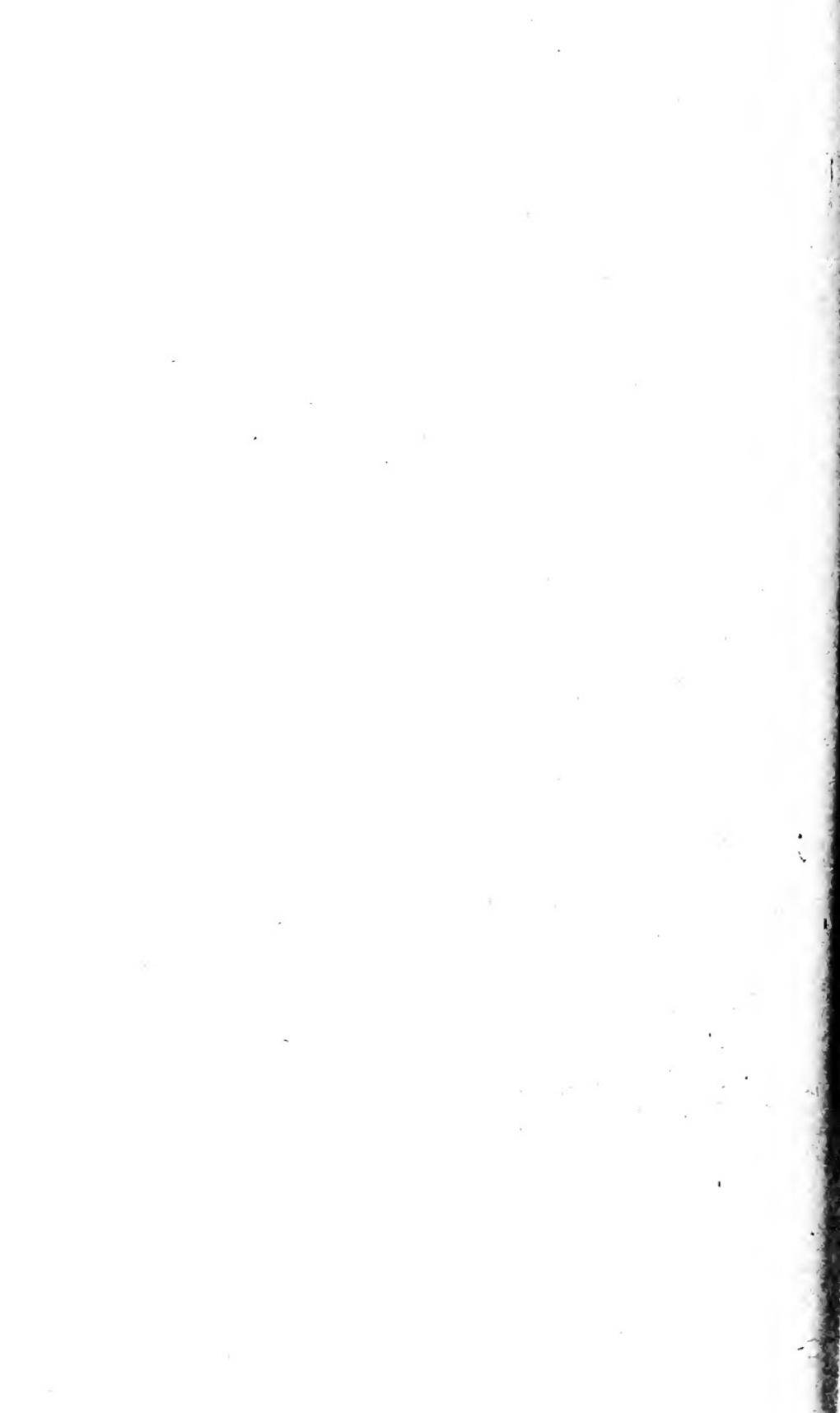
Forthwith Nora announces to her astonished husband her intention to leave his home, to abandon her children, and to seek the fulfillment of her life. When he asks her if she would thus forsake her "holiest duties"—her duties to her husband and her children—she replies: "I have other duties equally sacred—my duties to myself." And when he proclaims "Before all else you are a wife and mother," she stops all further discussion by saying: "That I no longer believe. I believe that before all else I am a human being." And so cutting loose from everything that stands in the way of her development—the ties of wifehood and motherhood, the opinion of conventional society, and the teachings of religion—Nora goes out into the world, a solitary individual, in quest of her selfhood, to fulfill her duties towards herself.

The severe criticism which greeted this play was also directed at "Ghosts," in which Ibsen shows the terrible consequences of immorality, destructive degeneracy and raving insanity in a son who reaps what his father has sown, and thus representing the full measure of the crime which society commits in the name of law, order and obligation to family life. He also shows the iniquity of law or custom in compelling either a man or a woman to continue a marriage relationship which has become



HENRIK IBSEN

The bitter foe of traditions, customs and doctrines surrounding
conventional marriage



repulsive, while he makes a stern demand for an equal code of morals for both sexes. In the course of the play there is also a bitter arraignment of the attitude of conventional religion in this matter and the shackles it has placed on sexual freedom.

In "The Lady from the Sea" Ibsen portrays the hollow life of a woman who has married for a home and its comforts. Discovering that the life she is leading is not a true marriage, Ellida, the wife, insists on parting from her husband. After a long struggle he consents, and even agrees that she shall depart with a stranger who has appeared, although confessing, at the same time, that his love for her has deepened. On learning this, and that she is free to make her choice, Ellida decides to remain with her husband and exclaims: "Now, I will come to you again, for I come to you in freedom, of my own will and responsibility." In this play, as in all the other works of Ibsen, absolute freedom is insisted upon, and he was foremost among the advocates of the complete emancipation of women.

The lesson contained in "The Lady from the Sea" is one that Ibsen repeatedly enforced. It is the lesson that no action has moral worth unless it is the outcome of the individual will, unhampered in its free activity by any extraneous circumstances. Even the most sacred of the conventional sanctions of human conduct must give way before the imperious demand of the individual to be captain of his soul and master of his fate. Such is the opinion expressed by one of Ibsen's biographers who has discussed the motive underlying this play. He further remarks: "If Ibsen generally preferred to make

women rather than men the embodiment of this idea of individual freedom, it was because the danger of leading artificial lives is for them the greater because, in the present condition of society, they are the chief sufferers from the tyranny of convention and prescription."

Of Ibsen it has been said that few men of the last century have exerted a greater formative influence on general thinking. His only rival was Tolstoy. It is amazing that these two men, one from Scandinavia and the other from Russia, hailing from two spots which modern historians contend for as the birthplace of the Aryan race, should have had so much effect on modern life, although neither was in the actual sense popular.

Fully as revolutionary as the works of Ibsen are those of Ellen Key, the Swedish writer, who has recently startled the world by her presentation of what she terms "the new erotic ethics." Among her books which have been translated into English is her brilliant "Love and Marriage," which is really the first part of her most extensive work, "Lines of Life." Her other well-known works include "The Century of the Child" and "The Morality of Women." She has not only written extensively but has also lectured much on social questions.

This remarkable woman, whom Dr. Havelock Ellis has called "one of the chief moral forces of our times," was born in Sweden, though her ancestors on her father's side were Scotch. For twenty years she occupied the chair of history of civilization at the Popular University of Stockholm. Her influence throughout Europe has been great for a number of years, especially in Germany; and more recently, with the translation of her works, it has

extended to America. Her treatment of the subject of marriage, it may be added, is as spotlessly clean as it is relentlessly frank. A disciple of the German philosopher, Nietzsche—who upheld the right of every individual to live out his own nature regardless of others—Ellen Key's theories of marriage are, at least, evidence of a fine feeling for the sacredness of the sex relation; and her works abound in passages of almost Nietzschean incisiveness tempered by a more than Nietzschean humanity.

Ellen Key frankly regards the marriage institution as in a state of transition, and she sums up in her book every phase of the sex unrest which is now so evident. She declares that the choice lies between monogamous marriage and marriage as an expression of the claim of human life. She herself accepts the latter and affirms “the new conception of morality.” The race, she says, does not exist for the sake of monogamy, but monogamy for the sake of the race; mankind is therefore master of monogamy to preserve or to abolish it. “Love,” she explains, “is independent of monogamy. It is the result of that mysterious longing for perfection which in the course of evolution has raised instinct into passion and passion into love, and which is now striving to raise love itself to an even greater love. Great love arises when desire for a being of the other sex coalesces with the longing for a soul of one’s own kind.” She observes further, that “Ibsen in ‘Ghosts’ has etched into the moral consciousness the truth that a woman’s fidelity to her own personality, truth, courage and chastity is more important to the world than any possible fidelity to conventional morality.” She hails as one of the happy signs

of the times the fact that women now venture to acknowledge that they possess erotic senses while men are beginning to discover erotically that they have souls; that woman demands feelings in a man and he ideas in her.

She would not abolish monogamy, but she favors changes in the marriage code so radical that the very constitution of society must change if they are indorsed. As she remarks: "Society realizes that of all its fabrics marriage is the most complicated, the most delicate and the most significant. The majority of people are therefore not unnaturally seized with terror when the shrine of so many generations is threatened." Thus she makes a direct challenge to puritanism. Sex instinct, she asserts, is good, not dangerous; chastity is not in itself necessarily a virtue, and fidelity is not the last word in marriage ethics. "Unconditional fidelity to one person may be just as disastrous to the personality as unconditional continuance in a faith or an employment."

Like Mary Wollstonecraft, who declared that love is transitory, Ellen Key regards lifelong passion as an impossibility, although it is perfectly natural that the longing for it should prompt lovers to make vows of eternal fidelity. But is there not something almost Satanic, she asks, in the motive that makes us seize upon this promise and to base thereon the legal institution of marriage? She adds that lifelong tenacity was demanded in the days when it was assumed that a single doctrine or a single set of circumstances was entirely adequate for personal development for a whole lifetime. But in this age, the desire for fidelity must not and ought not to imply more than the will to be true to the deepest moods of

one's own personality. She further points out that as people change temperamentally with the progress of time, so a young woman after a few years of marriage may find herself in the presence of a husband who is a perfect stranger to her and does not correspond with her ideals. This furnishes another conclusive argument against the idea of decreeing the lifelong union of one man and one woman or attempting to cover the complex expressions of love. Consequently, she regards the ideal of unconditional fidelity in the marriage union as almost as delusive as asceticism; and with ascetic demands for purity, such as those propounded by Tolstoy, she has no sympathy whatever.

In a spirit that is radical in the extreme, Ellen Key approves of men and women finding their affinities, even after marriage, "as the relentless force of nature's will." To illustrate her meaning she describes how a good wife, married to a good husband, loving and loved, may be seized by a passion incomprehensible to herself, for another man. "Without reflection she gives herself up to the passion, to return again to the husband whom she has not ceased to love, but who never inspired in her the overmastering emotion whose purpose, according to the will of nature and the woman herself, ought to have been a child. The same will of nature manifests itself in a number of phenomena, often incomprehensible to even the persons concerned. An intellectual man or woman, for instance, is seized by a passion for a person far inferior. How often has not a 'good looking fellow' vanquished the most high souled man in the affections of such a woman. How often have not thoughtless beauty

and empty gaiety won from a superior man what the personality of an exceptional woman could not secure. The whole secret was nature's will to counterbalance cerebro-nervous genius by health and sensuous strength to the advantage of the race." Ellen Key calls this "the erotic attraction of dissimilarities," and says that such cases are "irresistibly united by the affinity of souls."

Like most radical writers of the present age, Ellen Key contends that so long as children are not involved, the sexual experiences of men and women, in and out of marriage, do not concern society in any conceivable way. The private life of the individual has nothing whatever to do with society. The interest of society must be centred on the child, and the "freedom of love's selection" should therefore be under conditions favorable to the race. Legal unions, she asserts, may sometimes be more harmful to the race than those out of wedlock; and she propounds the revolutionary theory that there are occasions when the unmarried have the right to claim motherhood as the married have to avoid it. In explanation she adds: "Irresponsible motherhood is always sin with or without marriage; responsible motherhood is always sacred with or without marriage." Consequently, the so-called "love child," she argues, must no longer be regarded as an object of scorn; for the only real illegitimate child is the child derived from a man with whom a woman is not in love. Only from this new conception of morality, she declares, can the race make an ascent towards greater perfection. All forms of sexual life which best serve this progress must therefore constitute the standards of the new morality.

Summing up her principles, Ellen Key insists on absolute liberty in marriage, an equal code of morals and the same sexual freedom for men and women. She condemns as immoral: all marriages without love and also when continued without mutual love; motherhood without love, whether sanctioned legally or not; all irresponsible parentage; the parentage of immature and degenerate persons; the voluntary sterility of married people fitted for the mission of the race. While she believes in the essential principle of monogamy, and recognizes that the civilized development of personal love removes all danger of the growth of polygamy, nevertheless she admits the existence of variations. Love and even monogamy are natural, she says, but legal marriage is only an external form with very feeble power of subjugating natural impulses, unless those impulses are weak, and it has no power at all of subjugating them permanently. She advocates early marriages, but she wisely adds that they involve the necessity for easy divorce. Young people can neither foretell the course of their own strongest needs nor estimate accurately the nature and quality of another personality. A marriage contracted at an early age may speedily cease to be a marriage in anything but name.

Considering her radical ideas concerning marriage, it would seem that Ellen Key would urge women to enter the business world in greater numbers in order to gain their independence. On the contrary, she is not in favor of this. It is in the life of the home, she asserts, that a normally healthy woman will find the best scope for her development.

"The idea of the suffragists," she says, "is to free women from the limitations of nature; but women cannot pass beyond those limits without interfering with the rights of nature and the potential child. Woman has a perfect right to avoid marriage and allow herself to be turned into a third sex, provided she finds in this her highest happiness. Motherhood, however, is the central factor of existence for most women, but woman's intellectual life has forced the maternal factor into the background for the time being. There are consequently women in whom the feeling of love has been stunted, and there are others who do not find in modern men the soulful and profound harmony in love that they quite rightly demand. There are others more numerous who wish for love but do not wish for motherhood. They absolutely fear it. This fear has taken possession of many active, strenuous women, as if a secret voice in the depths of their nature was telling them that by paying their tribute to their sex they would lose that power of brilliancy and sharpness of intellect by which they have elevated themselves above their sex. If things remain as they are, such women will increase in number."

Ellen Key believes in State subsidies to mothers who need assistance. She shows that work outside the home may have an injurious influence on women who are fitted for home life and motherhood, and also have an evil effect on their offspring. She takes the view that woman's entrance into the field of labor has lowered the wages and opportunities of employment for men, and in the business world is now causing a conflict between married and unmarried women, and between old and young.

In discussing the question of divorce, Ellen Key remarks that "marriages lightly entered into are many; divorces lightly entered into are few, at least where there are children. To the serious, therefore, divorce will always be serious." As a remedy for unhappy marriages she is strongly in favor of some system of free divorce, for whatever abuses it may involve they cannot be worse than those which marriage has produced and still produces—"marriage which is degraded by the coarsest of sexual habits, the most shameless trafficking, the most agonizing soul murders, the most inhuman cruelties and the grossest infringements of liberty that any department of modern life can show."

She adds: "There is no more obligation to abide by a marriage which one feels to be one's ruin than there is duty to commit suicide for the sake of society. It is true that modern men and women are less able to bear unhappiness in marriage than were those of former times, and this shows that connubial idealism makes greater demands than formerly. As to the arguments made by conservative people, that unhappy parents must live together for the sake of their children, my reply is that parents must be considered as an end in themselves. It is not asked that for the sake of the children they should commit every crime. Again, the opponents of divorce say that people must suffer for their mistakes as a warning to others. But the wholesale executions of former times, which were in conformity with this idea, did not tend to lessen crime. Marriage under constraint, and forcing people to bring children into the world, is an outrage on the sanctity and personality of the race. It is

only a question of time when the law which gives to one person the power to hold another against his or her desire, will be altogether abrogated. Mutual love is the only true marriage bond."

The revolutionary utterances of Ellen Key and of Ibsen find their counterpart, to a certain extent, in the works of some well-known English and American authors. Foremost among these is Bernard Shaw, whose fame is largely due to his persistent attacks on marriage as it exists at present, his advocacy of the rights of women and his demand for liberal divorce laws. In his dramatic works—and he is undoubtedly one of the most forceful playwrights of our times—views fully as radical as Ellen Key's are set forth, and these have had a great influence on public opinion.

Conventional ideas of marriage and divorce are vigorously attacked in Mr. Shaw's introduction to his play, "Getting Married." "There is," he says, "a revolt against marriage which has spread rapidly within my recollection, although we still assume the existence of a large and dangerous majority which regards the least hint of scepticism as to the duty and holiness of marriage as infamous and abhorrent." Taking up the religious view of marriage, Mr. Shaw refers to the attacks on marriage which were made by the early Christian fathers; then commenting on St. Paul's concession that "it is better to marry than to burn," he remarks: "No political constitution will ever succeed, or deserve to succeed, unless it includes the recognition of an absolute right to sexual experience and is untainted by the Pauline or romantic views that such experience is sinful in itself.

And since this experience, in its fullest sense, in the case of a woman must be carried to the point of child-bearing, it can only be reconciled with the acceptance of marriage with the child's father by legalizing polygamy, because there are more adult women in the country than men. . . . The only practicable alternative to the private contract of ancient Rome must be such an extension of divorce as will reduce the risks and obligations of marriage to a degree at which they will be none the worse than those of the alternative of marriage."

In discussing the sexual relation and the ideal marriage, Mr. Shaw expresses opinions remarkably akin to those of Ellen Key. He insists that the marriage ceremony itself cannot change human nature, and that the most successful marriages, in the last analysis, have nothing whatever to do with sex.

"We may take it that the ideal husband and the ideal wife are no more human beings than the cherubim. Possibly the great majority keeps its marriage vows in the technical divorce court sense. No husband and wife yet born keep them or can ever keep them in the ideal sense.

"The truth which people seem to overlook in this matter is, that the marriage ceremony is quite useless as a magic spell for changing in an instant the nature of the relations of two human beings to one another. Even the most affectionate couples must have moments during which they are far more conscious of one another's faults than of one another's attractions. . . .

"The fact remains that the most disastrous marriages are those founded exclusively on the sexual relation, and the most successful those in which it has been least considered, and in

which the decisive considerations have had nothing to do with sex, such as liking, money, congeniality of tastes, similarity of habits, suitability of class and so forth."

Replying to the usual arguments made against divorce and remarriage, Mr. Shaw says: "The inference is that changes of partners are not in themselves injurious or undesirable. People are not demoralized by them when they are effected according to law. Therefore, we need not hesitate to alter the law merely because the alteration would make such changes easier."

In direct opposition to the view of the conservatives, Mr. Shaw asserts that there are much more serious grounds for divorce than infidelity. In support of this assertion he remarks:

"If we take a document like Pepys' Diary, we learn that a woman may have an incorrigibly unfaithful husband, and yet be much better off than if she had an ill-tempered, peevish, maliciously sarcastic one, or was chained for life to a criminal, a drunkard, a lunatic, an idle vagrant or a person whose religious faith was contrary to her own. Imagine being married to a liar, a borrower, a mischief maker, a teaser, a tormentor of children and animals, or even simply to a bore. What woman wouldn't rather marry ten Pepyses, what man a dozen Nell Gwynnes? Adultery, far from being the first and only ground for divorce, might reasonably be made the last or wholly excluded. The fact for us to seize is, that in the eye of the law, adultery without consequences is merely a sentimental grievance, whereas the planting on one man of another's offspring is a substantial one."

Mr. Shaw points out that to impose marriage on two unmarried people who do not desire to marry one another

would be admittedly an act of enslavement. "But," he asks, "is it any worse than to impose a continuation of marriage on people who have ceased to be married? To this the reply may be made that the parties may not agree to a divorce; that one may desire to maintain the marriage the other wishes to dissolve. The same hardship, however, arises whenever a man in love proposes marriage to a woman and is refused. His case is the same as that of the husband whose wife tells him that she no longer cares for him and desires the marriage to be dissolved. You will say perhaps, if you are superstitious, that it is not the same—that marriage makes the difference. You are wrong; there is no magic in marriage. If there were, married couples would never desire to separate. But they do. And when they do it is simply slavery to compel them to remain together."

Mr. Shaw further declares that when women are set free from their economic slavery, unless divorce is made as easy as the dissolution of a business partnership, "the practice of dispensing with marriage will presently become so common that conventional couples will be ashamed to get married." Following this line of reasoning, he concludes that "divorce is not the destruction of marriage but the first condition of its maintenance. A thousand indissoluble marriages mean a thousand marriages and no more. A thousand divorces may mean two thousand marriages, for the couples may marry again."

No mention of the leaders of the marriage revolt would be complete without some reference to Max Nordau, whose works have attracted much notice in continental Europe. Of his books "*Degeneration*" is probably the

best known. A confirmed naturalist, Nordau rejects all spiritual conceptions of the family and finds the basis of love in the physical instinct of sexual passion, and this passion is love. Whenever, he asserts, it becomes stronger for one creature than another, the latter should be deserted for the former. His views on love are revolutionary. Civilization, he declares, instead of being a help to pure, true love is in reality a hindrance.

Two reasons are given by Nordau for the existence of the family, one physical and the other social. Drawn to woman from physiological reasons, man loves her when he desires her, but is indifferent when the desire is satisfied. As man would never have invented the institution of the family from physiological causes, this permanent alliance undoubtedly originated in social necessity, with the advantages of a well-ordered household and consideration of duties towards children and the State. The institution exists, first of all, for the protection of the wife and the children and not for the man. It would suit his nature better not to have it, for he is not so far advanced from polygamy in the evolutionary process as is woman.

Like Ibsen, Nordau is a pronounced individualist and a strong believer in sexual freedom. In his play, "The Right to Love," one of his characters, Bertha, deserts her husband and children to join her lover, having become tired of the monotony of married life and its conventions. When reminded of her duty to her husband, her children, and the opinion of the world, she replies: "What do I care about the world? I don't have to provide for the world but for myself. No human being is the property



COUNT LYOF TOLSTOY

Lofty ideals of the marriage relation are set forth in the works of this great Russian author



of another." Nordau, in short, asserts that the individual alone is to be considered and if any man or woman defies the established law and customs of society it is no crime but a human right.

A brief reference must be made to the doctrines of Tolstoy, whose views on love and marriage are not only in direct opposition to those of Nordau, but differ materially from the tenets of most writers of the Ibsen school.

In his works, and notably in the "Kreutzer Sonata," Tolstoy has protested against all looseness of sexual relations even in married life. Taking for his text the words of the Gospel, "Whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart," the Russian author applies this saying not only to the wives of other men but mainly to a man's own wife. He insists upon purity before marriage, and condemns the sin of women in so dressing as to appeal to the sexual passions of men, even if marriage is its object. Only as this degrading system is abolished and marriage is lifted into a higher realm, a spiritual atmosphere, can happy homes be established, fidelity maintained and well-born, well-trained children be given to the world. Briefly expressed, Tolstoy's ideal of marriage is a spiritual relation in which there should be no trace of sensuality. Towards this ideal he believed the human race must steadily move, even though its attainment will mean annihilation.

It is not surprising that these and other spiritual ideals of Tolstoy should have failed to exert such a powerful influence on the thought of the world as the more material views of Ellen Key and Bernard Shaw. The

latter are undoubtedly more to the liking of men and women who rebel against the restraints of conventional marriage. At the same time, it must be recognized that while both writers are bitter enemies of convention they are equally opposed to the doctrine of free love. Ellen Key especially holds in abhorrence the idea of mating and remating according to chance inclination. Neither of these writers, however, has any practicable substitute to offer for the present marriage system, and even Ellen Key admits that her programme as a whole will be impossible for an indefinite number of generations.

A storm of criticism has naturally been aroused by the revolutionary views presented by these writers and their host of imitators. The defiance of conventionality and the extreme individualism of Ibsen and Bernard Shaw have been condemned as the quintessence of selfishness and as being in direct conflict with those principles of altruism which teach us that no man can live unto himself and attain the highest in life. It has been asserted that the characters in the plays of these authors are all abnormal people leading abnormal lives and cannot, therefore, be said to represent conditions in the world at large. Ellen Key has been accused of recommending that husbands should discard their wives when the latter have outlived their attractions and usefulness. It has also been said that in seeking authority for her revolt against the present conditions of marriage she appeals to the customs of primitive men and the instincts of the lower animals—in general from cultivated intelligence to subconscious nature, which being interpreted means the unconscious depths of our animality. One of her severest

critics, however, after condemning her appeal to natural instincts rather inconsistently uses the same argument to support his own position, as he remarks: "The root of the family and, of course, its incidents of marriage and divorce, is to be found in nature, or in other words in natural law. Therefore we must be true to the ideals of nature in this matter."

It is easy enough, of course, to find flaws in any set of doctrines, and to misjudge the spirit of a book by picking out a few disconnected passages here and there for criticism. What seems perfectly obvious to any unbiased reader of Ellen Key's works is, that her one great desire is to see marriage placed on a more satisfactory basis, with the total abolition of all that does violence to the higher ethical instincts of the mind. In this respect one is impelled to feel that she has a true vision of the future.

Whether we agree or disagree with the views of these modern writers, we are obliged to admit that they have been inspired by worthy motives in attempting to sweep away what they believe to be shams, injustices and immoralities corrupting the institution of marriage as it exists to-day. It must also be admitted that they have done much to arouse the general conscience of the world, and have helped to pave the way to new and better conditions.

We have only to compare the writings of these leaders of the modern marriage revolt with those of the men who led uprisings against conventional marriage early in the last century in order to appreciate how wonderfully thought has kept pace with the material progress of the

world. While Mormonism, Shakerism and various other "isms" of the early nineteenth century were heralded by strange philosophies, mingled with stranger religious doctrines, which led to the founding of free-love communities notorious for their sensuality, we find that the marriage reformers of to-day are usually the sternest of moralists. There is, indeed, something almost puritanical in Ibsen's fierce denunciation of vice, in Bernard Shaw's arraignment of social hypocrisies and in Tolstoy's eloquent demands for sexual purity. And it seems probable that this great advance in thought betokens the rise of a new society, which is already outlining itself within the structures of the old, in which will disappear many of those difficulties and hindrances which at present seem to stand in the way of a more healthful relation between the sexes.

While books of a professedly serious nature have had a deep influence on popular conceptions of marriage, the revolt against conventionality has been given an impetus equally great by modern dramatists and writers of fiction. A generation or two ago, novels usually began with a hero and heroine free from previous matrimonial entanglement and ended happily with a marriage. The novelists of the present age have changed all that. Striking out boldly on new lines, they often begin their stories with a marriage, and derive their most dramatic motives and scenes from its breakdown through the interplay of their characters. All this is typical of the restlessness and dissatisfaction with which we approach the moral questions of our time. There is nothing that we do not analyze, examine and criticise. Marriages may still be made in heaven, but man having brought them down to

the level of earth no longer hesitates to apply to them the higher criticism of this world.

The trend of modern fiction strikingly illustrates the social changes that have taken place in less than fifty years. Not only is a new spirit manifested in the popular literature of the present day, but even in a few decades the personality of the heroes and heroines of romance has undergone a marked change. It has been observed that between the Amelias and Sophy Westerns of the eighteenth century and the most typical of modern women there exists no greater gap than that which exists between the Tom Joneses and Squire Westerns and the most typical of entirely modern men. Few of the leading characters of Dickens have their counterparts at the present day, and authors of a comparatively recent period are now hopelessly out of date. Even in fiction, men and women have become practical and matter of fact. At the present time it is the problem novel, dealing with the vital questions of marriage, divorce and social life, which commands the biggest sale. Of this tendency in modern fiction a good idea is conveyed by the following extracts from a recent advertisement of two "best sellers":

"Is your husband a nonentity? Suppose you felt it in you to become a great emotional actress or artist or professional woman, would your husband help or hinder you? Suppose he and your friends disapproved, would you give it up or follow the desire that possessed you!" That is the theme of—(here follows the title of the book).

The next description reads:

"Should a married woman be absolutely dependent upon her husband financially? Has she a right to a portion of his in-

come legally set aside in her name in return for the part she bears in the home? Should she be helpless to prevent her husband from mortgaging home and lands when she does not approve of the expenditure? Is the bearing of children a duty when she is never considered and never given a voice in affairs which are mutually vital?" These are some of the problems discussed in—.

The sex question as a subject for literature has not been confined to the works of modern authors. From the days of the Bronté sisters, and Miss Mulock and George Eliot, to writers of the present generation, such as Mrs. Humphry Ward, Mrs. Wharton, Mrs. Craigie and Gertrude Atherton, novelists have dealt with the marriage problem from almost every conceivable point of view. The conflict of custom, religion and civil law in matters of divorce, and particularly the attitude of the Roman Catholic Church, with all the arguments usually forthcoming on either side, have been pressed into service as subjects for plays and novels. The sufferings, physical and spiritual, as well as the immorality into which the inflexible rules of the church often draw men and women have been dramatically portrayed. In this literature, past and present, may be traced the evolution of modern radical ideas on the subjects of marriage and divorce.

Movements to reform marriage and modify the relations of the sexes have come and gone, leaving a greater or lesser impression on society. At the present time perhaps one of the most powerful forces at work in the world is Socialism, which seems destined to exert a deep influence in shaping the family to fit modern industrial conditions. The great authority on the family under the Socialistic

scheme was the late August Bebel, who, for many years, was the leader of the Social Democrats of Germany. It is to his book, "Woman under Socialism," that almost all Socialists turn as the chief authority on the woman question.

Bebel insisted upon woman's complete emancipation and asserted that until she is given industrial equality and perfect freedom with man all progress is hopeless under the present social system. He demanded equal sexual privileges and the same code of morals for men and women. "To the present social system," he declared, "prostitution is due, and the greatest sufferer from its tyranny is the female. While man escapes from the consequences of his misdeeds, he is all the harder and severer upon a woman who commits a 'slip,' regardless of the fact that she is possessed of the same impulses as man. Thus, he obliges woman to suppress voluntarily her most powerful impulses, and upon her chastity is conditioned both her character in society and her marriage. Nothing more strongly illustrates the dependence of woman upon man than this radically different conception regarding the gratification of an identically natural impulse."

The same position is taken by another Socialistic writer, Bax, who declares that monogamy and prostitution go together as both are based on commercial considerations, one being purchase and the other hire. Both are based on a wrong economic principle. "Socialism," he says, "will strike at the root at once of compulsory monogamy and prostitution by inaugurating an era of marriage based on free choice and intention, and characterized by

the absence of external coercion." Under Socialism, therefore, he asserts, woman would have an equal chance with man in satisfying her nature and seeking happiness. She would be socially and economically independent, being no longer the subject of man for his exploitation, but in every way his equal and mistress of her lot. The marriage bond would be a private contract celebrated without the intervention of any functionary. The satisfaction of the sexual instinct is a private concern in which men and women must be left free, as in the satisfaction of any other passion or appetite. If incompatibility comes between two persons brought together in marriage, Socialistic morality demands their separation, for it is unnatural and hence immoral.

In recent years a number of works of fiction dealing with marriage from the Socialistic point of view have appeared, some of which have had an enormous circulation. Most of the writers have proceeded on the assumption that for ages men have permitted women to develop intellectually, but socially and morally they are as much slaves as ever. Grant Allen has taken this view in his novel, "The Woman Who Did," in which his heroine unites with the man of her choice without any marriage ceremony, because the conventional marriage is a recognition of man's supremacy over woman. She tells him plainly that if she loves a man at all it must be on terms of perfect freedom. "I cannot bind myself down to live with him to my shame one day longer than I love him; or to love him at all if I find him unworthy of my purest love or unable to retain it, or if I discover some other more fit to be loved by me." Her betrothed accepts her

on these conditions. Then she insists on living apart to preserve her independence, receiving only occasional visits from the man who will be the father of her children. She even retains her maiden name. Nothing is surrendered.

In a later work, "The British Barbarian," the same author teaches that it is immoral for a woman to live with a man one moment after she discovers that her love for him has ceased. The heroine of the story leaves her husband to join another man who eventually tells the deserted husband: "For this lady to have spent one night of her life under your roof would have been an untruth to her higher and purer nature. What she has taken now in exchange is holy marriage, the only real and sacred marriage, the marriage of true souls to which even the wiser of yourselves, the people of your nation, would not admit impediment."

That thoughtful and prolific writer, H. G. Wells, has taken a foremost place among writers of the Socialistic school, his novels and sociological books presenting strong pleas for the modification of the institution of the family in conformity with modern requirements. In his works he has probably dealt more forcefully with the sex question and marriage than any other modern writer of fiction.

The ultra-radical idea of marriage has become comparatively common in modern literature. For instance, in her "Story of an African Farm," Olive Schreiner has adopted it as her principal theme, and she incidentally makes Lyndall, one of her characters, say to the father of her illegitimate child, "I like to experiment; I like to try. I cannot marry you because I cannot be tied;

but if you wish, you may take me away with you; then, when we do not love any more, we can say good-bye." The men in the book apparently have no scorn for this illegitimacy nor any such contempt for the "fallen woman" as the world has had in the past.

The upholders of conservatism combat these radical views, pronouncing them to be revolutionary and immoral, and insisting that the higher form of monogamy cannot be abolished without disastrous results to civilization. Through all the changes of the ages, they point out, the characteristic feature has persisted of father, mother and children forming one group of which the father has been the head, in the sense not only of being the master but also of being responsible for its protection and maintenance. The Socialistic conception of the family, they assert, with its permission of promiscuous unions and State care of children, would be a violent break from the natural laws of development. As a recent writer on this subject has said: "Human conditions can never be perfect and no human state can ever be static. Man's unhappiness is more the fruit of his imperfect sympathy, love and wisdom than of his material surroundings. Wretchedness creeps into the homes of the rich as well as into the homes of the poor. Divorce is quite as common among the cultured and the wealthy as among those in poverty and ignorance. This seems to argue that perfect economic conditions could not assure happy and useful homes unless there were corresponding perfection in the spiritual natures of men."

Other writers who take this line of argument deny the assertions of Socialists that woman is a slave. While

they admit that the father of the past may have been a tyrant, they insist that social changes have dethroned the tyrant, and to describe the wife of to-day as owned by the husband suggests the humorist rather than the honest seeker for truth. The relationship between an intelligent man and his wife in these days is not that of ownership but partnership.

That such varied and conflicting views should exist in the sexual sphere is regarded by some writers as convincing proof that we have no specified sexual morality at all. Among those who have expressed this opinion is Havelock Ellis, who argues that while the morality of marriage belongs mainly to the sphere of property, having been largely developed on the property basis, we have as yet no sexual morality which has been based on the specific facts of life. "This becomes clear," he adds, "when we recognize that the sexual relationship is based on love, and that basis is so deep as to be even physiological. But our so-called sexual morality, so far from being based on that fact, attempts to ignore it altogether. It is no concern of the State to inquire into the number of persons with whom a man or woman chooses to have sexual relationships; it is a private matter which may indeed affect their own finer spiritual development, but which it is impertinent for the State to pry into. It is on these lines that Ellen Key and other pioneers are forming a new sexual morality and are advancing far beyond the morals of tradition and even of practice."

IV

THE IDEAL MARRIAGE

INTERESTING VIEWS ON THIS SUBJECT GATHERED FROM
CURRENT DISCUSSIONS

EVIDENCES of dissatisfaction with the present conditions of marriage are not confined to the literature described in the preceding chapter, but they are even to be found in our popular newspapers and magazines. That discontent and unrest are widely prevalent is indicated by much that appears in print, while the mere consideration of the space which editors are devoting to the discussion of marriage problems serves to show the vast amount of public interest in these subjects. If, for example, an editor asks "Is marriage a failure?" he is certain to receive hundreds, perhaps thousands of answers; and if he asks "Should a wife have pin money or earn her own living?" he receives just as many replies. Not only is this significant, but it seems to disprove the assertion, so often made, that the masses are not interested in questions of marriage and divorce.

It is probable, moreover, that discussions of these subjects in newspapers and magazines have a far greater influence on the public mind than is generally supposed; for while it is true that a certain proportion of people may enjoy reading such contributions simply from curiosity,

there are undoubtedly many who follow them with a more practical object in view. Conscious that their own matrimonial conditions are unsatisfactory, but only vaguely aware of the causes or of possible remedies, they are probably accustomed to read with avidity the opinions of others in the hope of obtaining information and guidance.

The increasing prominence given by the press to discussions of every new phase of marriage and divorce, or every novel experiment in search of matrimonial happiness, cannot be explained on the basis that most editors are influenced by a mere love of sensation. The fundamental rule in the conduct of a successful newspaper or magazine is to give the public what it wants, and the present copious treatment of matrimonial topics is undoubtedly in response to an urgent demand. In their efforts to solve the problems connected with marriage and to discover the causes of matrimonial discord, the newspapers and periodicals are thus creating a special field of literature, and one which is steadily increasing in interest and importance.

It may be further observed that no conscientious student of social questions can afford to ignore these contributions to our current literature, or to regard editorial comment as "newspaper talk." For, in spite of public libraries, the newspaper and the magazine still represent the principal reading matter of the masses in this country, from which they derive a great part of their ideas. Therefore, the opinions of the press in matters of marriage and divorce are clearly entitled to consideration. We can gain a very good idea of popular conceptions of marriage in the course of the last century from articles which

appeared in newspapers and magazines at various periods; and it is probable that sociologists a hundred years hence—they have our sympathy, of course—will even scan the pages of our present “yellow journals” to ascertain the popular views of this generation. This is a sufficient reason for including in our study a brief review of current discussions of marriage and, in this way, to gain some idea of the drift of popular opinion.

A file of old newspapers or a few volumes of old magazines will often furnish some interesting proofs of the extent to which matrimonial ideals have changed in the course of years. In the early 'seventies, for example, the editor of a magazine of large circulation started a discussion as to what qualities an ideal husband should possess. Of the many young women whose letters were published, comparatively few had considered the serious aspects of marriage, the majority, apparently, being more influenced by romantic ideas. The ideal husband, they declared, must first of all be good looking, next, he must have a satisfactory income, and while excelling in all manly accomplishments, he should be fond of music and poetry, but above all he must be completely devoted to his wife.

At the present day, far more serious considerations enter into such discussions. Those who take part in them have much to say about the economic independence of women and the various problems that concern the home, the recognition of certain moral standards, the rights of husbands and wives to freedom and happiness, and even in discussions of marriage the possibility of divorce is not overlooked. As requisites for marriage a man's

capacity for work, his health and his character, are given more consideration than his personal appearance or romantic ideas.

A striking contrast to the ideas of marriage expressed in the 'seventies was afforded recently by a discussion which took place through the medium of a Boston newspaper. The editor having invited replies to the question: "What qualities are required in a man or woman to make a perfect union?" many letters were written by young men and women who had evidently formed high ideals of what married life should be. A majority of the young women expressed the opinion that the ideal husband should have led a good life, have excellent health, and be able to do without stimulants of any description. He must have courage and decision, believe in the equality of the sexes, love his wife, coöperate with her and be perfectly frank. One young woman wrote:

"The ideal husband must leave the question of motherhood entirely to his wife and help her to rear the children. Above all, he must have some great aim in life besides merely earning a living—some mighty purpose to which all his thoughts would point. All questions to do with sex should be left to the woman's better judgment. Women must demand more of men. They must assert their fastidiousness. Civilization is only beginnng to realize that woman must be given absolute freedom to exercise her choice. She can then get her own value. Men will become just as strong, honorable and beautiful in their lives as she demands. There should be a grand coöperation between man and wife, each helping the other to fulfill the highest degree of beauty and utility. A man to be

an ideal husband should regard womanhood and motherhood as sacred—not as jests and conveniences."

In their definition of the ideal wife there was a unanimous opinion, among the young men who took part in the discussion, that she must have health, honor, courage, common sense, and be thoroughly sincere. She must have a high conception of the universe and humanity. She should be her husband's friend and comrade, and possess strength of character, sympathy and patience. The opinion was very generally expressed that certain defects in temperament and early training were making it increasingly difficult for young men and women to enter married life with any assurance of its permanence.

On the subject of marriage in general an interesting contribution was made by Madame Maeterlinck, wife of the Belgian genius, who has evidently been a keen observer. In comparing American conditions with the customs of continental Europe, which usually involve the dowry system, and marriage by family arrangement, she wrote:

"Marriage is a convention of society, but it has nothing to do with anything concerning love, other than uniting two individuals who are in love or profess themselves to be. In America marriage is said to be generally entered into for love. In my country it is more than often contracted for other reasons, such as fortune, family, lands. But sometimes marriages for fortune end in marriages for love, while marriages for love end in nothing but troubles and divorce. That is why I say that marriage is only a social form. It has nothing to do with morals either. Love, on the other hand, means sacrifice and

unselfishness. It is behind all beautiful and successful things and makes them what they are and what they appear to be.

"Men and women should mate on a plane of equality; there should be an equal balance. I believe that a woman should have the same privileges as a man. If he aspires to a free moral code, why should she be debarred?

"Marriage must be based upon truth, absolute frankness and honesty between a man and a woman. Real companionship and mutual toleration form the only true basis for the true marriage."

That the matrimonial ideas of the present age are becoming more practical and prosaic is proved, to some extent, by the "Answers to Correspondents" columns which form the principal feature of most women's pages in our popular newspapers. Whereas, in former times, unhappy wives were counseled to bear patiently the ill-treatment of their husbands and to soften hard hearts by womanly resignation or even tears, such wives, in these days, are often bluntly advised to seek the divorce court. Weeping wives receive scant sympathy. "No self-respecting woman will tolerate a husband's snubs or insults," said a well-known woman writer who edits the women's page of a newspaper which boasts the largest circulation in the United States. "On the first intimation of her husband that her presence is unwelcome, any woman with spirit will pack her trunks and leave him. That any wife should stay with a husband who is tired of her and wants to be rid of her is astounding."

But even ill treatment, it was once asserted, could never kill a woman's love; that once she loved a man she

would continue to love him to the end of the chapter, no matter what his conduct might be. "Nonsense," says another woman, who has written much on such topics. "In matters of affection men and women are alike. They love a person only as long as he or she is lovable. Woman's love, like man's, will die of neglect. If many a husband, who still thinks he is a romantic hero to his quiet little wife, could get her real opinion of him it would give him such a shock that he would never recover."

The causes which should impel unhappy wives to seek divorce have been much discussed in the newspapers of late, and such discussions have incidentally shown the remarkable extent to which radical ideas are spreading. While women who take the conservative view have been inclined to think that infidelity should be the sole cause for separation, a still larger number have expressed a totally different opinion. "I quite agree with the views of Bernard Shaw on this subject," wrote a woman who has taken a foremost part in the suffrage movement. "I believe there are worse faults than infidelity. For my part I would rather have a husband who was occasionally unfaithful than one who said: 'What did you do with the dollar I gave you last week?' I would not consider infidelity necessarily a cause for divorce. Man is a predatory animal at best, and is still following the dictates of this impulse. In certain cases I do not think that the husband is altogether to blame for his attentions to other women. Oftentimes the wife, through her indifference or lack of sentiment, may be at fault."

While these popular discussions convey a good idea of the spirit in which thoughtful men and women are regard-

ing marriage, its purposes and obligations, they also serve to reveal the existence of much unrest or dissatisfaction with various aspects of matrimony. This is notably the case with a certain type of magazine stories and articles which has come into existence in the last few years. Often freakish, always ill digested and written in the mood of the moment for the interest of the casual reader, such literature is nevertheless valuable as an indication of the general tendency of public opinion. Marriage and divorce, in fact, have become favorite topics for treatment in magazines of large circulation, and particularly those which are read mainly by women. Such periodicals seldom miss an issue without at least one story of domestic trouble or an article dealing with some phase of marriage or divorce. It may sometimes be thought that these subjects have been treated from every conceivable point of view and that nothing remains to be said; but the next month's magazines show how wide is the range of possibility in dealing with such topics. One opens a magazine and finds that a well-known woman writer has endeavored to explain "Why American Marriages Fail"; a glance into the pages of another reveals a story of unhappy married life, headed: "Why I Left My Husband"; in another the editor presents as his leading feature some carefully selected opinions on "The Real Causes of Divorce."

To anyone who has made a careful study of these contributions and discussions, it must be apparent that while many writers have dealt with the subject of marriage fairly and intelligently, others have been far too biased in their views to be convincing. This is especially true of certain opinions that have been expressed regarding de-

fектs in men and women which, in these days, tend to disrupt married life. In some instances writers who have discussed this subject have applied to the whole mass of society sweeping criticisms which could be justly directed at only a particular class.

An example of this type of criticism was afforded recently by a magazine article written by a woman prominently identified with a great religious organization. This writer accused the majority of American women of being careless in morals, indifferent about religion and opposed to motherhood. "With too many," she added, "marriage is a mere experiment, and their craze for independence is destructive." The same magazine presented the views of another woman, one holding a high position in the social world, who denounced the mass of woman-kind in this country for becoming "careless, mentally supine and morally slipshod; of showing a deplorable tendency to extravagance in living, in their demands for dress, automobiles and other things beyond the reach of a moderate income." Men were being driven to crime, she asserted, and family life in the United States was failing through the glaring faults of women.

It was in much the same vein that the late David Graham Phillips penned some severe condemnations of the "parasite woman," who has been so bitterly denounced by women writers. In one of his last articles, he declared that "idle women are the curse of this country, especially among the great middle class. They become cultured parasites and are utterly unfitted to mate with hard working men."

These opinions have been frankly indorsed by a recent

magazine writer, a woman, who asserts that the modern American wife is seldom a productive helpmate, and in many cases not even an active one. "She is simply a consumer, helping her husband to spend what he earns; and at best she is simply a purchasing agent, and often-times an inefficient one." Strongly advocating the entry of women into business and their economic independence, this writer is convinced that the increasing extent of divorce is largely due to the defective home training of the average American girl. "Our wonderful American women," she says, "are famous the world over. They occupy their spare time with art classes and other harmless pursuits, widely foreign to the tastes and aspirations of their busy husbands. The husband belongs to the laboring class; the wife belongs to the leisure class. He develops as a man; she degenerates as a lady." The result is incompatibility, and this frequently leads to divorce.

An entirely different opinion was expressed by a woman, well known as a playwright, who replied to these criticisms. "I have made a careful study of men and their peculiarities" she wrote, "and I am convinced that if certain wives are parasites it is because men prefer it, and do not wish them to be helpful or economically independent. The average man does not want an independent wife who goes to work, leaving the home to take care of itself. His ideal is one heart, one mind, one soul for the household and that one his." This writer added:

"Men like the parasitic woman who depends on them for everything, including thoughts. The dream girl of the average young man's fancy is fluffy and sweet, coquet-

tish and trifling. In real life, the ideal wife of the rich man is doing exactly what her husband married her for. She is a valuable asset, because she represents him socially, and advertises him financially, by the magnificence of her jewels, automobiles and entertainments. She is generally attractive, and that is why the advanced woman, while speaking with grief of the 'immoral type of the idle woman's beauty,' has to admit it is there. Then again, there is the vast multitude of American wives and mothers who love their homes, and they must be considered. Fancy those women going into offices to become economically independent. Their families would think them crazy."

Following the same line of argument, another feminine writer has insisted that American women are still inclined to domestic life in spite of the suffrage movement and their opportunities for economic independence, and that they are perfectly satisfied with present conditions of marriage. In support of this assertion, she calls attention to the fact that the typical women's magazines of the present time are no different in spirit from those of the early nineteenth century. Over fifty years ago such publications as *Godey's Lady's Book* supplied the mental pabulum of the average woman in this country, inculcating the pursuit of dress and domestic work as the most important feminine duties. Ample proof that women are not yet freed from their craving for such literary diet is afforded by the contents of the typical women's magazines to-day, all of which make leading features of clothes, domestic duties and the limited sphere of the home.

This fact has also been commented upon by Professor Earl Barnes, the author of a recent work, "Woman in

Modern Society," who remarks: "It is difficult to find one of these publications that represents general or abstract ideas. At least one of these journals, which boasts a fabulous circulation, is supported by its women subscribers and readers to oppose the larger interests of women in education, industry and political life. At least, if it does not oppose those interests it does not aid them. Imagine a million German women sending the Kaiser a dollar and a half a year to induce him to tell them once a month to go back to their kitchens, churches and children."

Such magazines probably represent the ideas and tastes of that vast number of women who still cling to traditional ideas of home and woman's sphere. It was only recently, in fact, that one of them, while editorially condemning the suffrage movement and the wider activities of women, published an article by a woman writer of the conservative and reactionary type, who attempted to explain the reasons of the prevailing feminine discontent. In her opinion it was chiefly due to woman's abandonment of domestic work and neglect of the home and its duties. Through entering the business world in such enormous numbers women, she argued, have reduced the earning capacity of men, and have thus made it increasingly difficult for men to support wives and families. "Woman's place," she insisted, "is at home, and until women return there and settle down contentedly, divorce will continue to increase."

In another periodical, a woman writer, who expressed a similar opinion, went even further and asserted that three-fourths of the present marriage failures were due to the weakness of husbands, and their inability to exact the traditional degree of obedience from their wives. "In

the animal world," she said, "the male is master, and the present women's movement and demand for equality with men is plainly contrary to the laws of nature. There is something in the feminine psychology that calls for proof of man's masterfulness. There is even something instinctively primitive in a woman that responds with satisfaction to the brute in man. Women demand manliness from men and invariably feel contempt for the man whose mental and physical attainments are inferior to their own. Woman cannot be coördinate. Her merits have full play only when she is in subordination. We see her natural defects more plainly when she leaves her subordinate state. Why do so many American marriages fail? Simply because husbands exhibit too much weakness in giving in to the whims of their wives.

"At heart a woman knows that the man who does not yield to her wishes is a true man. At the bottom of her heart a woman loves the man who won't obey her. To be his equal in manly attainments robs romance. The German philosopher, Otto Weininger, well said: 'If man is going to treat woman as she wishes, he must beat her, for she likes to be hurt.' For the woman of strong character, I think the mental shaking is better than the bodily. But the stronger a woman's mind and character, the more intensely she longs for her mate to be still stronger than she."

This theory, however, has been combated by a woman who evidently believes in feminine equality, and even superiority. "In the animal world," she says, "with few exceptions, the female with the growth of the maternal instinct, jostles and slights the male, with little regard

for his likes or dislikes, forgets him, ignores him, and devotes herself to her young. ‘Among animals, as among men,’ says Letourneau, ‘the animal is at first matriarchal, and it is only in the higher states of the animal kingdom that the male becomes a controlling constituent among the family group.’”

While men writers have had much to say regarding the defects of wives, most women writers have not been oblivious to the faults of husbands. Married men of the present day have been accused of failing in the little courtesies of life, of forgetting little attentions to their wives and becoming too prosaic. Some feminine critics have asserted, furthermore, that the average American husband is too much devoted to business, which kills sentiment, and in too many cases he is insufficiently educated. “Such men,” remarked one writer, “are not interesting companions for their more cultured wives. Women have both culture and sentiment, and find tired, worn-out husbands far from attractive.” A large class of married men have been accused of spoiling their wives, of making themselves martyrs to their wives’ whims, and of actually boring their wives by too much generosity. This has given rise to dissatisfaction which has made married life intolerable. The young men of the present day are charged with being selfish and extravagant, and with being unwilling to economize in order to marry and make homes.

According to one woman writer of some note, the prevailing lack of sentiment in these days is not only a serious cause of discontent in married life, but a prolific breeder of divorce. “I think,” says this writer, “that it would do our young people no harm if sentimentality

were more the fashion. I do not mean, of course, that it should be exaggerated, but we are all becoming too matter of fact and prosaic, too businesslike. This is shown not only in the popular songs of the day, but in our short stories and novels. I am sure that the advent of women in the business world has done a great deal towards eliminating sentiment and destroying romance. The modern girl, although she may be as romantic at heart as her predecessor, and as full of imagination, feels, nevertheless, that she is best protected by a cold and prosaic manner, and she has done her share towards bringing love-making to a very matter of fact level. This spirit is having a disastrous effect on married life.

This opinion is strongly indorsed by a woman who has written much on the problems of marriage and divorce. In advising wives how to keep their husbands, she recently declared that the wife who fusses over her spouse, treats him like a child, and looks after his comfort, provides the sort of companionship that the average man demands. "That is his ideal of the perfect wife, and the woman who can provide only intellectual companionship is far from conforming to this ideal."

Other women writers of the old-fashioned type have taken much the same view, and some have asserted that the entry of women into the business world has tended to destroy the veil of mystery with which man has enwrapped woman for ages past. Woman's mystery is thus being threatened. There are still other women writers, however, who insist that one of the principal causes of feminine unrest in married life is the failure of the average man to understand women, and that a

consequent lack of tact and discrimination on the part of husbands leads to many a separation. Some men whose words carry weight are disposed to take even a more radical view. For instance, Professor George Trumbull Ladd, a well-known psychologist, has gone so far as to assert that women do not even understand themselves. "They are," he says, "more un-understandable because so large a portion of their motives and sources of feeling and action are instinctive, unconscious or sub-conscious. Few men show a profound knowledge of woman's essentially feminine characteristics; but, on the other hand, almost never a woman can be found who understands the male character profoundly—especially the character of a good and high-minded man."

What chiefly impresses a thoughtful reader who examines this great mass of ephemeral literature on the marriage question is the fact that most writers who take the conservative view have dealt only with superficial matters, and have failed entirely to grasp the underlying causes of matrimonial ills. In reading the views on marriage expressed by these conservative or reactionary writers, one is irresistibly reminded of the ideas of marriage which prevailed some fifty years ago, with their recognition of the home as woman's only sphere and their insistence upon the traditional supremacy of man. Completely overlooking the influence of social progress in changing home life, the position of womankind and the general aspects of marriage, such writers have attempted the useless task of judging modern conditions by standards which were in vogue half a century ago.

As already pointed out, one of the prominent causes

of the present revolt against certain features of conventional marriage is the increasing emancipation of women and their greater liberation from the state of tutelage of father and husband to which womankind were subject prior to the present generation. Assisted by their rapid march towards economic independence, this freedom has produced a number of new and remarkable qualities in the intellectual woman of to-day which increasingly unfit her for the conventional married life. In his recent work, "Love's Coming of Age," Edward Carpenter, the English author, has observed that "there are to-day thousands of women, and every day more thousands, who are determined that they will no longer endure the arrogant lordship and egoism of men nor countenance in themselves or other women the craft and servility which are necessary complements of the relation; who see too clearly in the oak and ivy marriage its parasitism on the one hand and strangulation on the other. They feel that as long as women are economically dependent they cannot stand up for themselves and insist on those rights which men, from stupidity and selfishness, will not voluntarily grant them."

In discussing this subject lately, a well-known woman writer pointed out, with much truth, that women have discovered they can be no longer forced into matrimony, and that there are thousands who are seizing opportunities to carve out a different career for themselves. Thus there are to-day a host of women who have no intention of having homes and acknowledging the rule of husbands. Their talents and inclinations having led them in another direction, they feel the stirrings of a different kind of life. They enter commercial or professional fields, and

many of them have the brains of men. "Frankly," says this writer, "I believe that the modern woman is rapidly developing an ability to compete with men in nearly every branch of work, and in thus enlarging the horizon of her activities I think she is enriching, not endangering, her womanhood. To this influence, coupled with changing economic conditions, is due the prevalence of the small families which are now the rule, people having learned the folly of bringing more children into the world than they can provide for adequately. Race suicide means, in fact, too many children, not too few."

It is a significant fact that a majority of women writers whose views have appeared in the more serious magazines have agreed that changed economic conditions have radically altered various conditions of married life. They are also convinced that it has become increasingly necessary for women to widen their social activities after marriage in order to lessen the friction incident to the complicated system of our times. That some difference of opinion exists concerning the direction in which these activities should be turned was strikingly apparent in a recent discussion between Ida M. Tarbell and Charlotte Perkins Gilman, two eminent women representing opposing ethical standards. While both these writers are urging women to increased social activity, Miss Tarbell would have them concentrate this activity on the home, making it more intensive. Mrs. Gilman, on the contrary, argues for a further extension of women's work in the world. They agree that the basic fact of woman's life is motherhood.

According to Miss Tarbell, the business of being a

woman is child-bearing and rearing. "In every profession and industry," she says, "we have scores of successful women but almost never a great woman, and yet the world is full of great women. These women understand, they are familiar with big sacrifices and appreciative of the fine things; they are far-seeing and prophetic. The conditions of business and professional life are unnatural for women. To succeed in it woman encases herself in an unnatural armor. For the normal, healthy woman this means suppression of what is strongest in her nature, the power which differentiates her chiefly from man, the power of emotion—her affectability, as the scientists call it. She must overcome her own nature, put it in bonds, cripple it, to do her work. Here is a fundamental reason for the failure of women to reach the first rank."

Mrs. Gilman, while agreeing that the business of women is wifehood and motherhood, believes that as a man's is husbandhood and fatherhood, yet both men and women have a large area of work outside their sex spheres. Miss Tarbell's arguments concerning the different qualities of the sexes is opposed by Mrs. Gilman. It is based, she says, on the ancient theory that woman's entire nature is limited by her femininity, that she has had feminine qualities and no others, and that if she did anything outside the home she thereby did violence to her nature. This theory idealizes the home as the fulfillment of life in its beginning and basis which, Mrs. Gilman argues, is its natural place in a highly evolved civilization. Books, trades and professions, however, she asserts, are not really masculine and therefore should not be controlled exclusively by men. They have nothing to do with sex. They

are human and belong to women precisely as to men.

Miss Tarbell, says Mrs. Gilman, dwells upon the difference between men and women, and so do all those who try to keep woman absolutely upon a sex basis. "Woman is just as different as every female is from the male of its species plus the difference of her artificial restrictions. This difference is complete and irremediable and no amount of education or imitation of men can change it. But," Mrs. Gilman adds, "woman is no more different as a shopkeeper, a writer, an actor or any other human functionary than a lioness differs from a lion in hunting or a duck from a drake in diving. Men and women are similar by ninety per cent more than they are different."

Mrs. Gilman further denies that the duties of motherhood render a woman unfit to earn her own living. She points out that the maternal duties of females in the animal world are not deterrents. Consequently, it is a fallacy to use such an argument in regard to human beings. Mothers, she remarks, not only work hard at housekeeping, but help churches, education, charities and make themselves useful to the community in many other ways. Women of ease and wealth provide for their children better care than a poor mother can. They do not spend more time upon it themselves nor more care and effort. They have other occupations. A sound, healthy female has twenty-five years before she is married and a mother, and twenty-five years after the period of such maternal service as is expected of her has been given. This should be devoted to useful work outside the home. The mercenary marriage, she adds, is a perfectly natural consequence of the economic dependence of women. The

period of such dependence is drawing to a close because its artificial usefulness is wearing out.

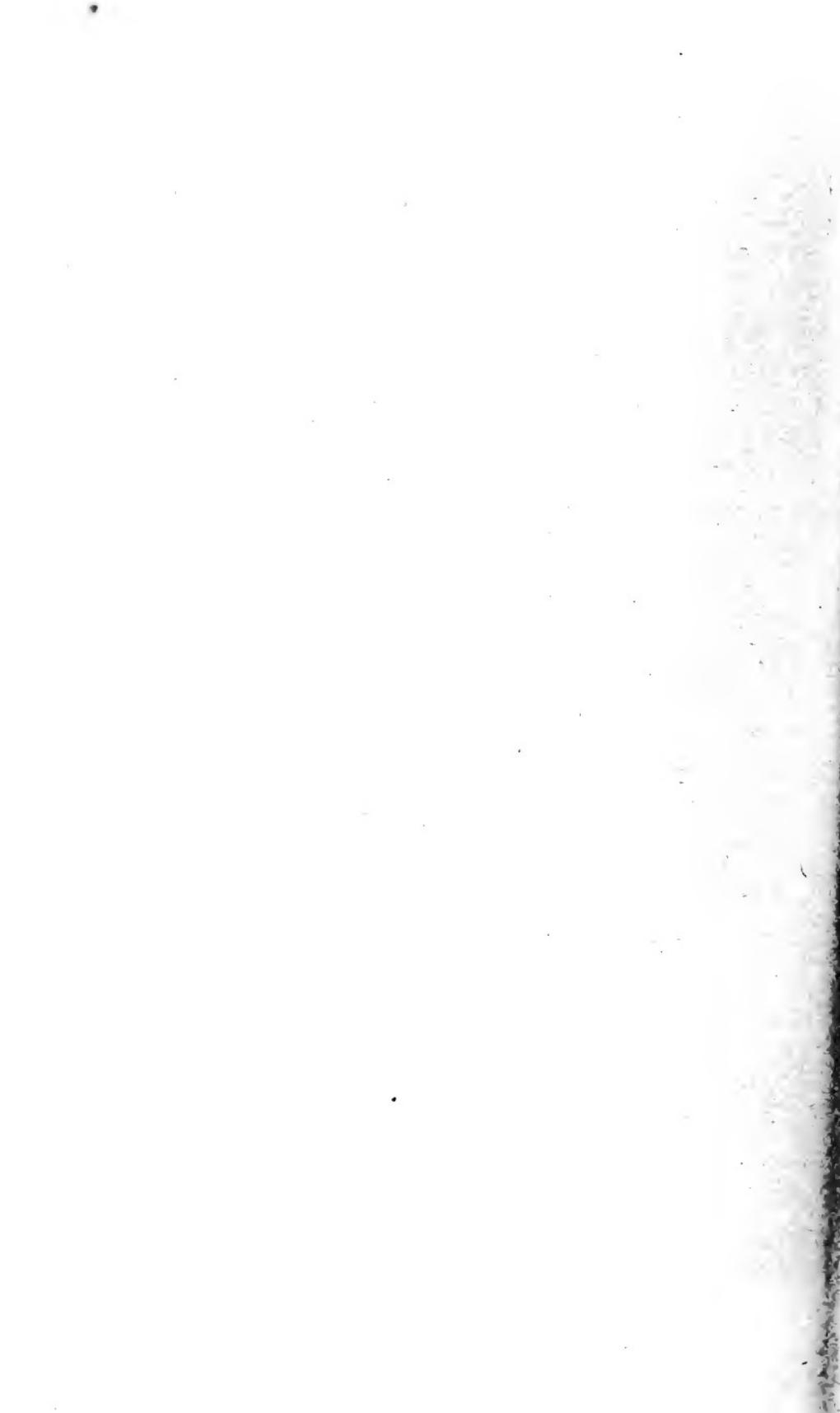
Mrs. Gilman and other writers who share her views are convinced that in the subjection of woman lies a prolific source of human ills. Children, they point out, inherit as many traits from the mother as from the father, and when half the race has been kept in a state of subjection and intellectual inferiority it is clear that the effects of such an unnatural position must be visited on the offspring. "Slavish women and petted women," says Mrs. Gilman, "cannot give birth to men of large and wholesome vision, and if we are to have a race of men strong and free, a race fit for achievement, then woman must be fitted for the task. She is the measure of the coming family of mankind." It has been remarked that human beings are the only animal species in which the sex relation is also an economic relation. Thus at the present time an entire sex is living in a relation of economic dependence upon the other sex. Against this unnatural condition many advanced women are protesting.

In her work, "Women and Economics," Mrs. Gilman has discussed this subject at some length, and has argued that woman in marriage gives no economic equivalent for the support she receives. She would scorn to accept a servant's wages and be regarded as a hired domestic; she would be just as averse to admitting that her services as a companion and possible mother entitled her to remuneration. "Analysis shows," says Mrs. Gilman, "that it is really the sex function upon which she depends to attract a mate and gain a livelihood." She adds: "It is



ELLEN KEY

The revolutionary views of this famous Swedish writer have excited world-wide discussion



true instinct that revolts against obtaining bread by the use of sex functions. Why then were we content to do this in marriage? Legally and justly we assert that it is right; but its reactionary effects on the parties concerned and on society at large are wrong. The physical effects are evil, though modified by our belief that they are right. What we think and feel alters the moral quality of an act in our consciousness as we do it, but does not alter the subsequent effect. We justify and approve the economic dependence of woman upon the sex relation in marriage. We condemn it unsparingly out of marriage."

Most progressive women writers apparently agree with Mrs. Gilman. They are of the opinion that until women devote themselves to some business or profession in the same spirit as men, and thus obtain a wider view of life and its purposes, the growing dissatisfaction with the average married existence, because of its limitations, is bound to continue. With the lessening work of the home, and the increasing objection of women to the purely domestic sphere, they are convinced that it is becoming more essential than ever that women even after marriage should follow some outside career. Even when there are children, they believe that women teachers and nurses should look after them, so as to enable mothers to make marriage merely an incident of life instead of its principal vocation.

Ellen Key, it will be recalled, has opposed this idea. In view of the diminishing supply of domestic servants, she would have women make far more of the home duties, as she believes that the life of the home is not only the natural vocation of the average woman but one which

gives her an opportunity to develop her personality in every possible way. While she recognizes that to some women domestic life is distasteful, and that their best opportunities lie outside the home, she is convinced that most women undergo deterioration if they steel themselves to engage in the strife and competition of business and professional careers, a life for which they are sexually unfitted. Miss Tarbell, it will be observed, has taken much the same view.

While masculine writers have kept out of this discussion altogether, or have prudently supported some feminine view, one has come boldly forward and taken direct issue with Mrs. Gilman in regard to her statement that woman's present economic inferiority to man is not due to any fundamental disability of sex. This writer is Dr. C. W. Saleeby, a well-known English author, whose works on the scientific aspects of marriage and motherhood have been widely read. In his recent book, "Woman and Womanhood," he remarks that "wherever Mrs. Gilman may be right, here the biologist knows that she is wrong."

Dr. Saleeby further observes that the statement in Mrs. Gilman's work, "Women and Economics," that the cares and duties of motherhood, woman's love, etc., are not commodities to be exchanged for bread is not logical, for the laborer is worthy of her hire. He adds: "We acknowledge the cares and duties of motherhood, but the cares and duties of fatherhood must also be considered. When Mrs. Gilman wishes women to be economically independent of men, whom she considers as animals distinguished by their destructive energy, brutality and intense sex vanity, she is simply recognizing half the truth. Let

either sex try to run the earth alone until Halley's comet returns and what would be left for it to see? Of all the follies on this subject, and they are many, the cry of each sex for itself is the wickedest and the worst. In the last resort, the economic independence of the sexes means nothing, because the sexes cannot independently reproduce themselves. At present, although Ellen Key is the only feminine writer who recognizes it, women can compete successfully with men only at the cost of complete womanhood, and that is the price which society as a whole cannot afford to pay if it wishes to continue."

In closing this brief review of popular discussions, it may be remarked, that they furnish unmistakable evidence of a widespread dissatisfaction with present conditions of marriage and also of the unrest which distinguishes the present age. And while, as we have seen, the new woman with advanced ideas is insisting upon the absolute independence of her sex and a wider sphere of usefulness, there are other women of high intelligence who still uphold the traditional idea, that woman's sphere should be confined to the home, and that men should do the bulk of the world's work. The drift of opinion seems to indicate, however, that when the present unrest has subsided some new conditions of marriage will find general acceptance; and while a compromise between the two extremes may be reached, yet certain modern ideas which have been presented in this chapter may then seem far less radical than at present. Whatever may be the outcome, every earnest attempt, in these days, to solve the complex problems of matrimony is to be commended. Indeed the very

earnestness with which these subjects are discussed shows that the present age is making a determined effort to discover the causes of matrimonial ills, to provide remedies for them, and thus to improve the general conditions of marriage.

V

DIVORCE IN THE UNITED STATES

AN EXPLANATION OF ITS REMARKABLE INCREASE, ITS
CAUSES AND EFFECTS

THROUGHOUT the civilized world to-day the increase of divorce is causing general concern, and it is a significant fact that it is in the most progressive countries that this increase has been greatest. In no other country, however, has the growth of divorce been so remarkable or excited so much discussion as in the United States. So amazing, indeed, has been this increase in the last few years, that all available forces of opposition have arrayed themselves against it. While certain churches, by their protests, have endeavored to combat what they regard as a serious evil, the civil law, with a similar object in view, has imposed various restrictions on the granting of divorce. Yet, in spite of denunciations and legal enactments, the rise of our national divorce rate continues to be persistent and rapid.

In proceeding to a study of this subject, it must be observed that divorce can only be considered logically in its relation to prevailing matrimonial conditions, its increase or decrease being dependent upon all changes which affect marriage, whether of morals, public opinion or social environment. From the facts that have been presented

already, it is evident that the social progress of modern times has not only wrought many changes in popular conceptions of marriage, but has vitally affected the status of marriage itself. It has also given rise to the remarkable growth of divorce.

The fact that an increasing number of married people are becoming dissatisfied with conventional married life, and are seeking to free themselves from the marriage contract, is clearly evidence of some widespread changes in social conditions. [This may also be said of the increasing influence of certain disturbing elements responsible for incompatibilities in married life which frequently result in cruelty, desertion, drunkenness, bigamy or other crimes.] Therefore, as certain new aspects of marriage have resulted from the revolutionary influences of social progress, so the increase of divorce may be likewise regarded as largely an effect of the changes which are adjusting society to the new basis of modern civilization.

Such is the view that is taken by most sociologists. To them the brief duration of so many marriages, in these days, and the increasing resort to divorce, are simply the results of the social changes of the age which, in the end, are destined to work out for the benefit of society at large. On the other hand, there are many observers of a conservative type who take an entirely different view, and who regard divorce as a national evil for which some drastic remedy must be found. Consequently, there exists a wide diversity of opinion as to the causes of divorce and its proper mode of treatment.

Whichever side we may be inclined to take, this, at least, is certain—that economic progress, which has had

such an important influence on marriage, has had an equally powerful effect on the increase of divorce. The pressure of modern economic conditions on the social life of the people, the rising standard and cost of living, the strain of modern business, and the changes which the home is undergoing, together with the greater freedom and opportunities for women, have all had their effect. Another fact that may be mentioned again is the increasing recognition of marriage as a civil contract which has caused ecclesiastical opposition to divorce to lose much of its former influence. For a study of divorce to be of any practical value, all these factors must be taken into account, since it is certainly due to these underlying conditions that so many marriages end in failure. It is also undoubtedly true that the removal of various external supports provided by former social and economic conditions has tended to bring about sweeping changes in the popular view of marriage.

There is still another fact which must not be overlooked. The people of the United States, above all others, cherish ideals of individualism. They are also the people among whom, above all others, there is the greatest amount of what Riebmayer calls "blood chaos." Under such circumstances, as Havelock Ellis has observed, the difficulties of conjugal life are necessarily at a maximum, and marriage is liable to subtle impediments which must forever elude the statute book. "The most vigorous and progressive countries," Dr. Ellis adds, "are those which insist most strictly on the purity of sexual unions. In the United States it was pointed out, many years ago, that divorce is highest where the standard of education and

morality is highest. It was the New England States, with strict puritanic traditions of moral freedom, which took the lead in granting facilities for divorce. The divorce movement is not, as some have foolishly supposed, a movement making for immorality, but immorality is the inevitable accompaniment of undesirable marriage."

In considering the growth of divorce in the United States, the effect of public opinion must also be considered. It is obviously true that society, in this country, has ceased to regard divorce as the disgrace which it was considered up to the middle of the nineteenth century. American divorces were then comparatively few in number. Their rapid increase may be said to date from the 'seventies, in the days following the Civil War, when a new wave of progress swept over the land, and the sudden expansion of wealth brought about many new conditions. Added to this, there was a general spread of education and an inrush of new ideas which served to emphasize those economic changes to which reference has been made.

From the early 'seventies divorce in this country made rapid progress until, in the 'nineties, Sioux Falls, South Dakota, attained great notoriety through the establishment of a divorce colony there. This was the first instance of migratory divorce-seeking that has since become so common. Its explanation is simple. In order to encourage settlement, South Dakota had permitted citizenship to be acquired in six months, at the end of which time any new comer could establish residence and bring a legal action, such as a suit for divorce. The State also had an extremely liberal divorce law. Large numbers of people in quest of easy divorce were thus attracted to South

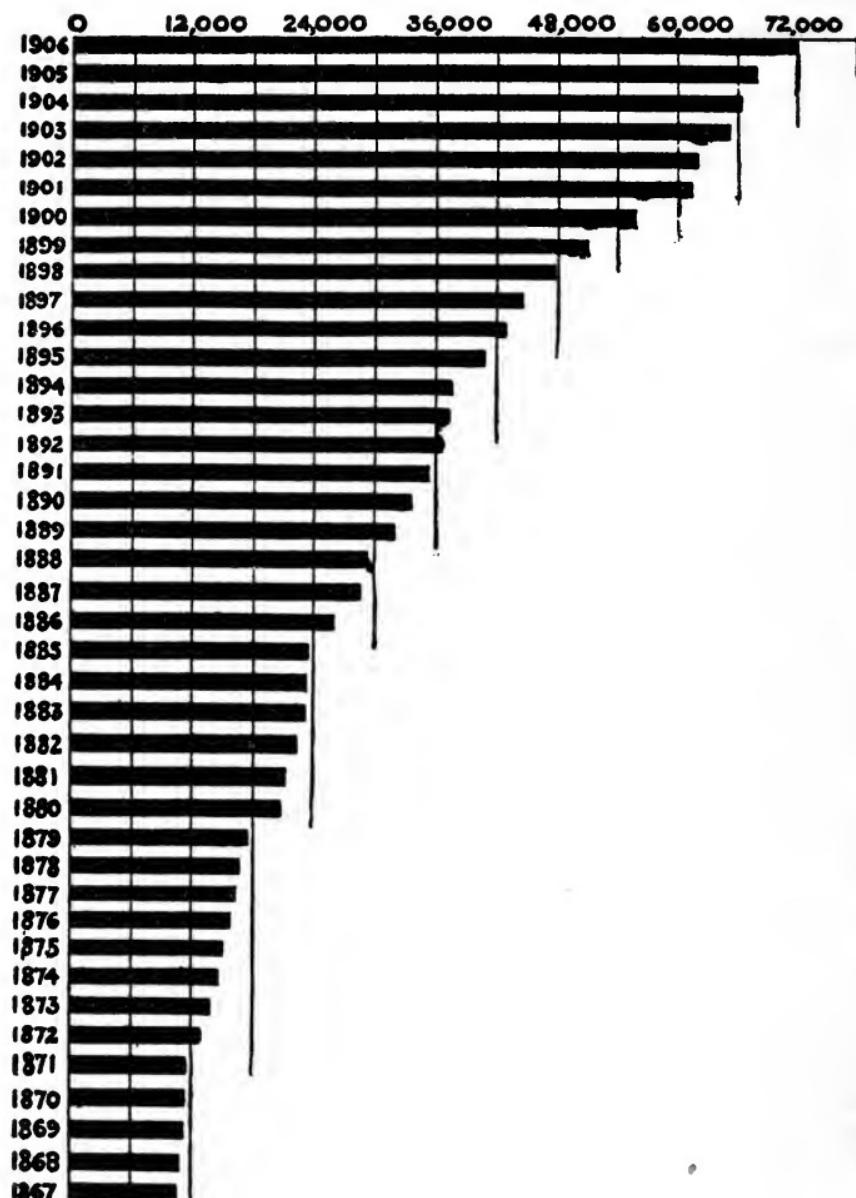
Dakota from New York and other States where restrictive laws were in force, and Sioux Falls being an attractive place, most of them settled in that town during the term necessary for bringing divorce proceedings. A few years ago South Dakota amended its divorce law, imposing various restrictions, and also compelling non-residents to live in the State for one year in order to acquire citizenship. On this account, the stream of migratory divorce-seekers was diverted to Nevada, which has a divorce law even more liberal than the former law of South Dakota.

That the growth of divorce has kept pace with the general progress of the country is shown by the latest statistics. In the United States in 1867 a total of 9,937 divorces was recorded, while ten years later, in 1877, the number had increased to 15,687. In 1886 the number was 25,535, in 1896 42,937, and in 1906 72,062, since which time there has been a rapid increase. The growth of divorce in forty years, ending with 1906, is strikingly shown in the chart on the next page.

A further idea of the enormous amount of divorce litigation taking place in the United States can be gained from the fact that, in twenty years, from 1867 to 1886, 328,716 divorces were granted by the courts of this country. Thereafter, the increase was so rapid that during the twenty years ending with 1906 the remarkable total of 945,625 was reached. That is to say, nearly a million American marriages went to pieces in twenty years. Roughly estimated, this would be 47,281 marriages a year, 3,940 a month, 130 a day! The whole represents a stupendous host of 1,891,250 divorced men and women, enough to populate a vast city, larger than Philadelphia

DIVORCE IN THE UNITED STATES

Annual number of divorces: 1867 to 1906.



and almost equal to St. Louis, Boston and Cleveland combined.

In the forty years included in the foregoing estimates over two and a half million adults were separated by divorce, while more than four million persons were affected by these divorces. The bulk of the decrees, it should be added, were granted in the Middle and Western States, in nine of which 632,000 decrees were recorded.

Such are some of the facts derived from a careful study of the Special Reports on Marriage and Divorce issued by the U. S. Census Bureau in 1909, covering a period of forty years, from 1867 to 1906, and a supplementary report issued a few years ago, giving the results of the census of 1910.* The most important points in these reports have been embodied in the present chapter.

From the Government's investigation, covering the period from 1870 to 1905, it appeared that for every hundred thousand of population in 1870 there were 29 divorces, and in 1905 there were 82. In other words, in about a generation there had been nearly a threefold increase in the divorce rate. This is to be partly explained by the increase of population, which has averaged about six millions every five years. The following table serves

* As conflicting statements concerning the recent growth of the national divorce rate have appeared in many newspapers, it should be mentioned that no Government statistics have been issued since these reports were published. The Census Bureau has no authority, under the law, to compile such statistics periodically, but only as authorized by special act of Congress. Therefore, a further report on marriage and divorce cannot be compiled until Congress grants authority for it. As the divorce rate is increasing and new conditions affecting marriage are being evolved, it would seem that, in the public interest, the requisite funds should be provided to enable the Census Bureau to bring the statistics fully up to date.

to illustrate this growth of divorce in proportion to population. It gives the figures for the periods of five years from 1870 to 1905. The figures given for the various years, it should be noted, show the average and not the actual totals.

YEAR.	DIVORCES.			POPULATION.			Population to one divorce.	Divorces per 100,000 population.		
	Annual average.*	Increase.		Total.	Increase.					
		Number.	Per cent.		Number.	Per cent.				
1905.....	67,791	12,289	22.1	†82,574,195	6,579,620	8.7	1,218	82 †		
1900.....	55,502	14,890	36.7	75,994,575	6,523,431	9.4	1,369	73		
1895.....	40,612	7,415	22.3	†69,471,144	6,523,430	10.4	1,711	58 †		
1890.....	33,197	8,573	34.8	†62,947,714	6,395,966	11.3	1,896	53 ‡		
1885.....	24,624	5,481	28.6	†56,551,748	6,395,965	12.8	2,297	44 †		
1880.....	19,143	4,774	33.2	50,155,783	5,798,706	13.1	2,620	38		
1875.....	14,369	3,162	28.2	†44,357,077	5,798,706	15.0	3,087	32 †		
1870.....	11,207	.....	.....	38,558,371	.....	.....	3,441	29

* The average is that of the 5-year period of which the year given is the median year except that for 1905, which is the average of the 4 years 1903 to 1906, inclusive.

† Estimated.

‡ Includes population of Indian Territory and Indian reservations.

The divorce rate, it may be added, has increased rapidly since 1906. In 1912, according to an unofficial estimate, about 100,000 decrees were granted which, if correct, would mean that the national divorce rate is now more than ten times larger than it was in 1867, or practically 100 divorces per 100,000 population annually. Such a rate, if actual and maintained, would also mean that at least 200,000 men and women in this country are being separated by divorce every year. As the result

of this estimate, it has been asserted that divorce is increasing more than three times as fast as the proportionate increase of population and that, to-day, no less than one American marriage in every twelve ends in divorce.*

According to the census of 1910, there were, in the United States, at that time, 341,277 divorced persons,—156,176 men, and 165,101 women—three per cent. of the total male population and four per cent. of the female population. In commenting on this, the census report pointed out that from 1897 to 1906, inclusive, 59,336 divorces, on an average, were granted annually in this country. Even if the rate had not increased by 1910, this would have meant that, at that time, 118,672 persons were being divorced every year. Consequently, if the number of divorced persons in the country in 1910 was correctly reported, and the annual divorce rate at that time had been no more than 59,336, the average length of time elapsing before divorced persons remarry or die would be only 2.9 years. "It seems incredible," said the report, "that this should be the case and, therefore, it is probable that the number of persons reported as divorced in 1910 was considerably less than the actual number."

In addition to divorce estimates, the statistics of mar-

* When the statistics of the Census Bureau were compiled eight years ago, an attempt was made to discover what proportion of marriages were destined to end in divorce. The computations, based on a twenty-year period, beginning with 1887, are given in detail in Bulletin 96 of the Bureau of the Census. As the result of this estimate, the report says: "The true figure probably lies somewhere between one marriage in every twelve or one in every sixteen." In a recent letter to the author, Mr. S. L. Rogers, Director of the Bureau of the Census, says: "The statement that one American marriage in every twelve ends in divorce does not appear to be much exaggerated."

riage were given, for the first time, in the Government report of 1909. They showed that between 1887 and 1906 12,832,044 marriages took place in the United States, the number of divorces in that period, as already stated, having been 945,625. A further idea of the ratio between marriages and divorces can be gathered from the fact that while, for example, in 1887 there were 483,069 marriages and 27,919 divorces, in 1906 marriages had increased to 853,290 and divorces numbered 72,062. From the official estimates, it would seem that the proportion of divorces to marriages had been increasing approximately at a threefold rate. It was pointed out, however, that a certain proportion of the marriages which ended in divorce had been performed in other countries. Thus, in the twenty-year period (1887 to 1906) while 945,625 divorces were recorded, the actual number of dissolved marriages known to have been celebrated in the United States was 820,264.

As a further illustration of the growth of divorce, as shown by the figures of 1900, the census report gave the number of divorces according to married population. The following statement showed the rapidity with which marriages were being dissolved by divorce:

"In 1900 the rate was 200 divorces per 100,000 married persons, or 2 divorces per 1,000 married persons. Now, 1,000 married persons represent approximately 500 married couples; if it were not for absentee husbands and wives they would represent exactly that number. The divorce rate based on the number of married couples was, therefore, 2 per 500 or 4 per 1,000. In other words, at the period represented by the figures for the year 1900 divorce was dissolving four marriages out of every 1,000 in existence."

'As already explained, this proportion has steadily increased in the last fourteen years.

It has been found that the marriage rate responds quickly to changes in economic conditions, rising in periods of prosperity and declining after a commercial crisis or panic and during hard times. "This deficiency of marriage in hard times," said the report of 1909, "suggests a loss to the community not ordinarily thought of in considering the effects of periods of financial depression." The estimates showed that there was a deficiency of 259,813 marriages in five years of hard times following the year 1892.

In the United States as a whole, when the last official report was compiled, there were 93 marriages for every ten thousand of population. Western Australia, Hungary and Saxony, which showed about the same average figures, were the only countries that rivalled this rate. The proportion of married people in the United States was also higher than in most foreign countries, Hungary, Bulgaria, Servia and Russia having been the only European countries in which the proportion exceeded that of the United States. In Ireland the fewest marriages were recorded, with Sweden next. Investigation showed that Ireland's rate was less than half that of the United States, half the adult population of Ireland having been single in 1910.

Among other things, the census report of 1909 discussed the rank attained by the United States in the matter of divorce, as compared with other countries. The facts which were presented fully confirmed the popular impression that in volume of divorce this country

leads the world. Even twenty years ago, in fact, Professor Willcox discovered, by careful investigation, that more divorces were probably granted in the United States than in all the rest of the Christian world, Protestant, Catholic and Greek; that is, more than all Europe outside the Baltic Peninsula, all civilized Australia and the rest of America.

The divorce rate of the United States in comparison with the rates of other countries is shown in the follow-

COUNTRY.	Census year.	Popula- tion.	DIVORCES: AN- NUAL AVERAGE. ¹	
			Num- ber.	Per 100,000 popu- lation.
Australia, Commonwealth of	1901	3,773,248	359	10
Austria	1900	26,150,708	179	1
Belgium	1900	6,693,548	705	11
Bulgaria	1900	3,744,283	* 396	11
Denmark	1901	2,449,540	411	17
France	1901	38,961,945	8,864	23
German Empire	1900	56,367,178	8,680	15
Prussia	1900	34,472,509	5,291	15
Saxony	1900	4,202,216	1,209	29
Bavaria	1900	6,176,057	491	8
Great Britain and Ireland:				
England and Wales	1901	32,527,843	568	2
Scotland	1901	4,472,103	175	4
Ireland	1901	4,458,775	(*)	(*)
Hungary, Kingdom of	1900	19,254,559	* 2,130	* 11
Italy	1901	32,475,253	* 819	* 3
Japan	1898	43,763,855	93,949	215
Netherlands	1899	5,104,137	512	10
New Zealand ⁶	1901	772,719	92	12
Norway	1900	2,221,477	129	6
Roumania	1899	5,956,690	1,187	20
Servia	1900	2,492,882	312	13
Sweden	1900	5,136,441	390	8
Switzerland	1900	3,315,443	1,053	32
United States	1900	75,994,575	55,502	73

¹ For the 5-year period of which the census year given is the median year except for Bulgaria and Servia.

² Average annual number of divorces 1896-1900.

³ Annual average less than 1. Only 1 divorce granted during the 5-year period.

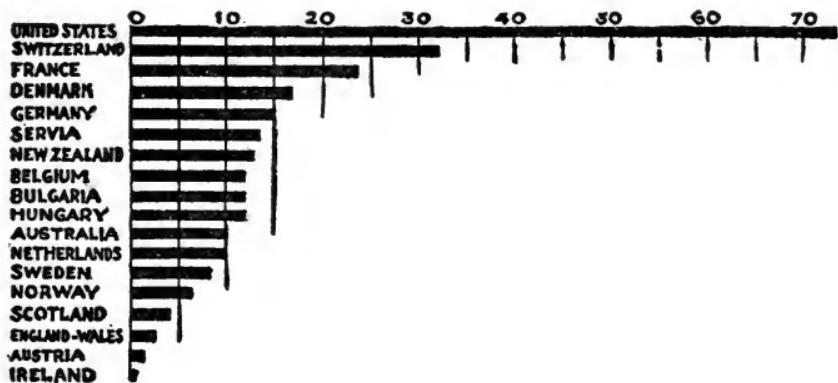
⁴ Annulments included with divorces.

⁵ Legal separations.

⁶ Exclusive of Maoris.

ing table, compiled some years ago, since which time there has been, in most instances, an important increase. In the case of Austria, it may be added, the rate covered both divorcees and separations, as in that country separations only are allowed to Catholics, who form most of the population.

The growth of divorce in the United States as compared with the increase in foreign countries is also impressively shown by the following chart:



To a certain extent divorce in the United States may be said to be geographical; that is to say, it has increased far more rapidly in some parts of the country than in others. This divorce movement among the various States has been shown in a series of maps contained in the census report of 1909, which are shaded according to the annual average number of divorcees per hundred thousand population. "Divorce," to quote the report, "is thus presented as a dark cloud gradually extending

over the country." From these maps two have been selected to show the growth of divorce from 1870 to 1900. These have been presented on the next page.

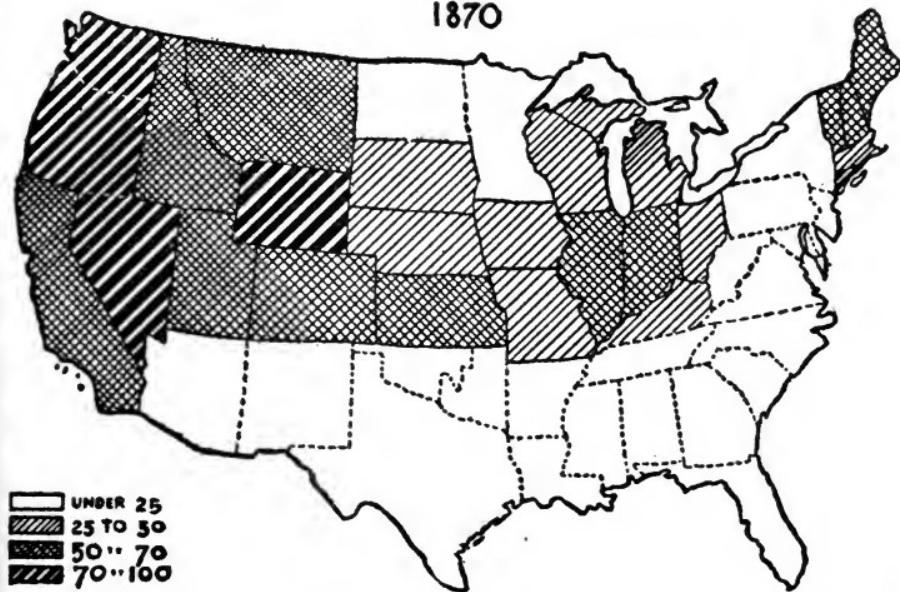
From the first map it will be seen that in the beginning the divorce rate was much higher in the Western States, but in the last map it is shown to have increased more rapidly in the South Central Division. Statistics show, in fact, that the Western, North Central and South Central Divisions of the United States have the highest divorce rates. The rate of the Western Division increased from 50 to about 170 divorces per 100,000 population from 1867 to 1906. In the same length of time the North Central rate increased from about 44 to about 108; the South Central from about 15 to 118; the North Atlantic from about 17 to about 41; the South Atlantic from about 8 to about 43. The Western and South Central Divisions, therefore, made the greatest increases.

The early growth of divorce in the West was undoubtedly fostered by the greater freedom from restraint, and the wider views of the people who settled there. Largely possessed of a spirit of adventure, they gained a new environment and new conditions of life which influenced them in discarding old traditions and cutting loose from the past. Even to-day the Western spirit finds expression in many ways. It is in the Western States that liberal ideas have had their greatest scope, and women's suffrage and other new movements have received their strongest support; and it is because of this tendency in the West that liberal divorce laws have become the rule.

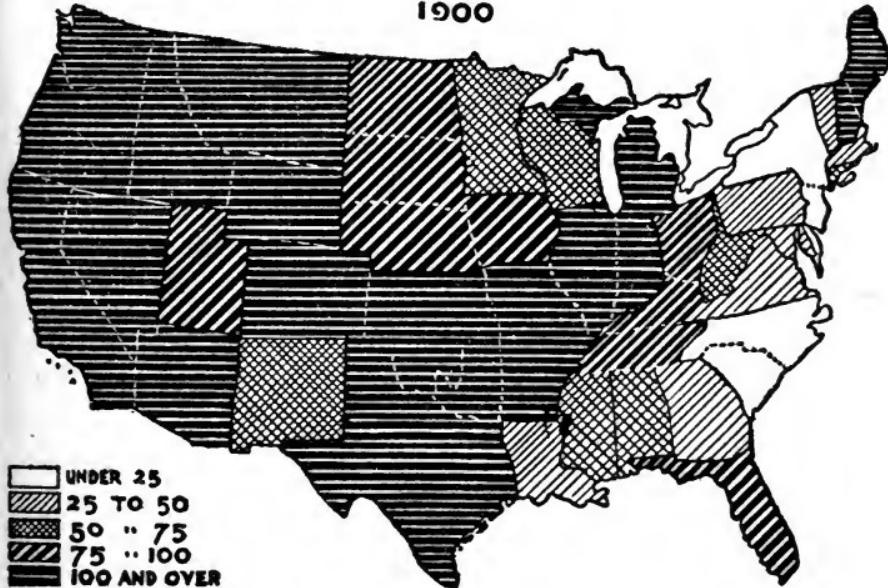
HOW DIVORCE INCREASES

These maps show the amazing spread of divorce, given in annual averages per 100,000 of population in a period of thirty years.

1870



1900



Broadly speaking, therefore, divorce increases as one goes westward.*

It was once supposed that as conditions in the West became more settled, with a resulting growth of conservatism, differences between East and West would eventually tend to disappear. No such tendency, however, is apparent in the latest statistics of divorce and, in fact, an opposite tendency seems to be at work. Investigation has shown that the divorce rate of the northeastern part of the country increases more slowly than in former times, while that of the western and newer sections has increased more rapidly. These results are affected by a variety of influences, among which may be mentioned: the composition of the population as regards race, the proportion of immigrants and the countries from which they come; the industrial and other conditions; the relative strength of the prevailing religions, and particularly that of the Roman Catholic faith; the variations in divorce laws, and in the procedure and practice of the courts granting divorce; and the annual migration of population either for the purpose of obtaining divorce or for other reasons.

The table on the next page shows the relative divorce rank of the States, on the basis of population, in the several decades covered by the Government report, ending with 1900. It will be noted that the numbers show the

* "It is estimated that the newer sections of the nation and the cities which are building up rapidly present somewhat similar conditions for producing divorce. The ambitious, the restless, and frequently the less scrupulous rush towards both kinds of communities. The restraints of former community life are removed, so that divorce arises as a probable concomitant of other excesses in life."—The Family and Society.

THE STATES COMPARED
HOW THEY HAVE RANKED IN REGARD TO DIVORCE

States and Territories Ranked According to Average Annual Num- ber ¹ of Divorces per 100,000 Married Popu- lation in 1900.	Average Annual Number ¹ of Divorces per 100,000 Population.				Rank According to Average Annual Number ¹ of Di- vorces per 100,000 Popu- lation.			
	1900	1890	1880	1870	1900	1890	1880	1870
Washington.....	184	109	75	88	1	3	11	4
Montana.....	167	139	125	73	2	2	2	7
Colorado.....	158	197	138	60	3	1	1	12
Arkansas.....	136	90	53	24	5	9	18	28
Texas.....	131	82	49	21	7	14	20	31
Oregon.....	134	108	92	80	6	4	7	6
Wyoming.....	118	86	111	99	11	11	4	1
Indiana.....	142	104	70	69	4	5	13	8
Idaho.....	120	93	58	67	9	8	17	9
Oklahoma.....	129	46	.....	.....	8	34	.....	.....
Arizona.....	120	67	47	10	9	21	23	38
Indian Territory.....	113	33	.....	.....	13	39	.....	.....
Nevada.....	111	97	106	99	15	7	5	1
California.....	108	84	84	52	17	12	9	14
Kansas.....	109	84	44	51	16	12	26	16
Maine.....	117	88	78	61	12	10	10	11
Missouri.....	103	71	40	29	20	19	29	23
Rhode Island.....	105	76	93	89	18	15	6	3
Utah.....	92	74	114	62	24	17	3	10
New Hampshire.....	112	100	85	53	14	6	8	13
South Dakota.....	95	65	48	25	22	24	21	26
North Dakota.....	88	47	46	.....	27	33	25	48
Illinois.....	100	75	68	51	21	16	14	16
Tennessee.....	89	62	38	24	26	26	30	28
Michigan.....	104	72	72	47	19	18	12	19
Iowa.....	93	67	60	49	23	21	16	18
Kentucky.....	84	58	35	28	28	27	31	25
Ohio.....	91	64	48	37	25	25	21	21
Florida.....	79	57	53	23	30	28	18	30
Nebraska.....	82	71	43	29	29	19	27	23
Mississippi.....	74	48	30	12	32	32	33	36
Alabama.....	69	54	27	10	34	29	35	38
New Mexico.....	73	46	12	1	33	34	42	46
West Virginia.....	64	41	25	18	36	36	37	33
Wisconsin.....	65	51	41	38	35	30	28	20
Vermont.....	75	49	47	50	31	31	23	15
District of Columbia.....	58	34	31	30	37	38	32	22
Minnesota.....	55	41	27	21	38	36	35	31
Connecticut.....	50	66	61	84	39	23	15	5
Louisiana.....	41	29	10	5	41	41	45	44
Massachusetts.....	47	32	30	25	40	40	33	26
Virginia.....	38	22	11	6	43	45	44	43
Maryland.....	40	24	12	12	42	43	42	36
Pennsylvania.....	35	27	21	18	44	42	38	33
Georgia.....	26	24	14	10	45	43	40	38
North Carolina.....	24	12	6	3	46	49	47	45
New Jersey.....	23	18	13	9	47	46	41	41
New York.....	23	17	16	16	47	48	39	35
Delaware.....	16	18	10	7	49	46	45	42
South Carolina.....	.....	.....	1	.....	.....	48	48	47

¹For the five-year period of which the census year is the median year.

annual quota of divorces per hundred thousand population for the five years of which the census year is the median year. The relative position of the States on the basis of married couples varies a little from this.

An examination of the statistical table gives some interesting results. Colorado, for example, which had the highest divorce rate in 1880 and 1890, yielded that place to Washington and took the third place. The change came in 1893 when restrictions on marriage in Colorado, and perhaps other causes, reduced the divorces for the five years, 1893 to 1897, to an average of 488 annually against an annual average of 815 for the former five years. Then a marked increase began, and in 1906 the divorces in the State, according to the census report, had reached 1,165, averaging over 1,100 annually for five years.

It has been observed that restrictions on the remarriage of divorced persons are sometimes followed by a decrease of divorce for a few years, and people then seem to find new ways to evade the laws and the former increase is resumed. This has also been noticed in connection with other legal enactments. For instance, legislative divorces in Delaware were abolished by constitutional amendment in 1887. In that year there were one hundred divorces of this class out of a total of 114. For the next four years the average number was twenty per year. Then the number began to show a growth toward the old figures.

In 1900 the three southern New England States showed a decrease of divorce,—Rhode Island, which had the third highest divorce rate in 1890, was eighteenth in

1900, and Connecticut passed from the fifth to the thirty-ninth. Massachusetts passed from the twenty-sixth to the fortieth. Maine held a uniform position, being twelfth at that time, while New Hampshire and Vermont lost ground. The four old Middle States of New York, Pennsylvania, Delaware and New Jersey, with most of the South Atlantic States, maintained very uniformly their places near the foot of the list throughout the thirty years.

Since the census reports were issued, California has shown a rapid increase in the number of its divorces, and, at the present time, it probably ranks much closer to the State of Washington. Bishop Moreland of California, who has gathered a mass of statistics, asserts that in 1909 the world's record was temporarily broken by San Francisco through the filing of 1,450 divorce applications and the issuance of 4,266 marriage licenses, a rate of one divorce to less than three marriages. The highest previous record was held by Japan up to 1897—one to three—but this was decreased when the new civil code went into effect. Bishop Moreland further asserts that while the national divorce rate was reported to be 200 per 100,000 married population, he believes that four Western States, Washington, Montana, Colorado and California, have probably more than double that average.

It has been asserted that from fifty to ninety per cent. of the divorces in the South are granted to negroes, and this assertion was supported to some extent by the figures in the census report of 1909. From careful investigation, however, it appears that such statistics cannot be regarded as establishing any definite fact in rela-

tion to the comparative prevalence of divorce among the white and colored races. In former years the records of the Southern States seldom included information as to the color of the litigants. Professor Willcox, who was an authority on this subject, discovered, in fact, that there was no correlation between the percentage of negro population and the divorce rate in the Southern States, while in all the States excepting Arkansas, the divorce rate was higher in the white counties than in the black. In Florida in 1900 the divorce rate decreased as the percentage of negroes in the total population increased; in Louisiana the reverse was the case. The other States showed such a variety of conditions that it was impossible to draw any definite conclusions from the figures.

In the census report of 1910 attention was called, once more, to the high percentage of divorces among negroes, and the report added: "The proportion of divorced persons reported is higher among negroes than in any other class, that for negro women, which is the highest of all, being 1.1 per cent." The report also stated that the divorce rate is lower among foreign born white persons than among native whites of native American parentage.

The temptations of city life are often blamed for a large proportion of unhappy marriages; but investigation has shown that the cities are not responsible for the increasing divorce rate, since, in 1906, it was very little higher in the cities than in the country. As far as the Government figures showed, the remarkable fact was brought out, that the divorce rate in New York City was actually less than the rate in the rural districts of the

Empire State, the proportion being 23 per hundred thousand population in the city and 25 in the country. In Illinois the situation was reversed, although Chicago had a rate of only 114 per hundred thousand population as compared with 92 in the rural parts of the State. In Massachusetts the city rate was 62, that of the country 42, while in Pennsylvania the difference between the city and country rates was more pronounced, the city rate being much higher.

In spite of the migration of divorce-seekers to Nevada and elsewhere, the extent of such migrations has been much exaggerated. Court records have proved that four-fifths of all the divorces in the United States were granted in the same counties in which the parties were married.

The extent to which the divorced remarry is one of the most important phases of the divorce problem. Yet only three States, it appears, Connecticut, Maine and Rhode Island, have kept records of marriages in a way to throw any light on this subject, and none conveyed any information as to the number of times that individuals procured divorce. The figures of fifteen years or more, for these three States, showed that the cases of divorced persons marrying again, so far as reported, almost invariably fell below forty per cent. of the number divorced in the same year. Probably not all cases of remarriage were returned, though the proportion lost may have been small. It has been apparent, for some time, to careful observers that divorce for the sake of immediate remarriage is far less frequent than generally supposed. A study of statistics has further shown that

while restrictions placed on remarriage following divorce may decrease divorces for a time, yet, as already pointed out, the numbers, in the course of a few years, rise again to their former proportions.

The question whether men or women figure most frequently as plaintiffs in divorce suits was answered by the Government report of 1909. It showed that almost exactly two-thirds of the total number of divorces in the United States from 1887 to 1904 were granted to the wife. A partial explanation of this preponderance of feminine plaintiffs is, that without considering the question of which party is more frequently responsible for matrimonial unhappiness that leads to divorce, the wife more often than the husband has a ground for obtaining a decree. Certain well-known and comparatively common grounds are more readily chargeable to the husband than to the wife. Among these is non-support, which for a husband seeking divorce would not be ordinarily an available ground, although in Utah six divorces were granted to husbands whose wives had failed to provide. Cruelty, although not infrequently the ground for a divorce granted to a husband, is more often the cause of the wife's application. Five divorces for cruelty are granted to the wife for every one granted to the husband.

In attempting to explain the preponderance of women plaintiffs in divorce suits, some writers have been inclined to believe that the wives in such cases must have been to blame for the matrimonial disasters. Finding that the growing independence of women has been accompanied by a great increase in divorce, they have argued that a further advance to freedom and equal political

rights is certain to be followed by still higher divorce rates. The latter part of the argument, however, is not supported by the evidence, for divorce has not increased in those States in which women have been granted the suffrage any more than in those where they do not vote.

In blaming women for the increase of divorce these critics have apparently failed to consider the extent to which men may be at fault. It is to be remembered that a woman usually loses socially and financially in divorce, and if there are children she may be deprived of the guardianship of them, while the man seldom usually loses financially and his love for the children rarely equals that of the mother. On the other hand, this view of the question has led many compilers of statistics to assume that the preponderance of women plaintiffs proves that the men concerned must have been lacking in the marital virtues. They have, however, overlooked one important fact which puts the whole matter in an entirely different light. In this country, in recent years, a feeling has undoubtedly grown up that if the separation of husband and wife becomes imperative, chivalrous motives should prompt the husband to permit the wife to institute divorce proceedings. It is realized that, socially speaking, a man who appears as defendant in a divorce case is injured far less than a woman is, and the general acceptance of this idea has had a great influence on litigation.

The most common single ground for divorce, it appears, is desertion. This accounted for nearly 38.9 per cent. of all divorces granted in the period 1887 to 1906;

for 49.4 per cent., or almost one-half, of those granted to the husband in this period, and for 33.6 per cent., or one-third, of those granted to the wife. It is commonly believed that divorce breaks up the home, but in these cases it is very evident that the home was broken up by desertion. It may be added that desertion, in most States, affords the best ground for collusive actions, and this may possibly explain the preponderance of desertion as a cause for divorce. That more women than men institute actions on this ground may be partly due to the chivalrous and collusive motive already mentioned.

Three-fourths of the divorces granted to husbands in the United States are for one or the other of three great causes,—desertion, adultery and cruelty, while the same proportion of those obtained by wives are for desertion, cruelty and adultery, the importance of these causes, in each instance, being in the orders named. Of the divorces granted to husbands, according to the Government statistics, 28.7 per cent. were for adultery of wives and 10.5 per cent. on the ground of cruelty, 13,678 men having obtained divorces on the latter ground in the five years from 1902 to 1906. Of the divorces granted to wives 27.5 per cent. were for cruelty on the part of husbands, but only 10 per cent. were obtained on the charge of adultery. Thus it appears that the rate of increase in divorces granted for adultery is much lower than that of any other single cause. Of all the cases in twenty years (1887 to 1906) the percentage stood as follows: desertion 38.9, cruelty 21.8, adultery 16.3.

Intemperance as a cause for divorce stands out with considerable prominence among the remaining grounds of

action, most of which figure in only small fractions. During the twenty-year period, from 1887 to 1906, intemperance appeared as a direct or indirect cause in 184,568 divorce cases, practically 19.5 per cent. of the total number. In those cases in which it was the sole cause 3,436 divorces were granted to husbands, 3,080 to wives.

As an indirect cause intemperance was present in one divorce case out of every five. It occurred far less frequently, however, in those cases in which the husband obtained the divorce because of the misconduct of the wife. In such cases intemperance existed in about one case out of sixteen. When the husband was at fault, on the other hand, intemperance was present in about one case out of four.

As might be naturally expected, intemperance was most frequently present as an indirect cause in those cases where the wife secured the divorce because of the cruelty of the husband. In one case out of every three of this class intemperance was present as an indirect cause. Divorces granted to the wife for neglect to provide also showed a high proportion in which intemperance was an indirect cause, about one out of five. In divorces granted to the husband intemperance was much less frequent as an indirect cause. The greatest relative frequency of intemperance as an indirect cause for the husband is in divorces granted for cruelty, where it was present in about one case out of ten.

Adultery is the only ground on which the number of divorces granted to husbands exceeds the number granted to the wife. And this may be attributed to the probability that the offense when committed by the wife is less likely

to be condoned and is perhaps more likely to be discovered. For, in spite of the growing demand for an equal standard of morals for both sexes, public sentiment at present undoubtedly condemns the offense in the case of the wife more strongly than in the husband's, and possibly the courts are in some degree influenced by this fact.

From the figures presented it will be seen that the enormous increase of divorce in recent years has been almost wholly based on the less serious and oftentimes collusive charges of desertion and cruelty. The latter cause seems to be on the increase, and the reports also show that more wives are deserting their husbands than formerly. It is also apparent from the facts presented that the smallest rate of increase with respect to any distinctive cause has been in those divorces granted to wives on the ground of their husbands' adultery. Such divorces increased 237.1 per cent. Nevertheless, of the divorces granted for adultery in the twenty years ending with 1906, 90,890, or 59 per cent. of the total, were awarded to husbands for marital offenses committed by wives, while of the remaining 41 per cent., 62,869 decrees were awarded to wives on account of their husbands' delinquencies. The shifting of adultery to other causes does not, it is believed, point so much to any lessening of the offense as to a change in attitude towards the grounds of divorce and the growing willingness to resort to what were formerly considered slight grounds for breaking the marriage relation.

In referring to the increase of desertion as a ground for divorce the government report says: "Desertion is undoubtedly the principal cause of divorce in this coun-

try, both for husbands and wives. For wives it is followed by violence, cruelty and indignities, and for husbands by sexual immorality. The statistical table shows that sexual immorality is a ground in almost one divorce out of every five granted to the husband for the misconduct of the wife."

In various parts of the country the proportion of divorces granted to husbands and wives for the principal causes has been found to differ widely. For example, the number of divorces obtained by husbands for adultery in the South Central Division is unusually high, while in the North Atlantic Division conditions are reversed, wives in that region obtaining more divorces for adultery than husbands. One-fourth of all the divorces for drunkenness in the Western Division from 1867 to 1886 were granted to husbands and one-fifth in the Southern.

Some interesting information concerning the ages of the divorced was given in the census report of 1910. It appears that the proportion ranging from 25 to 34 years of age was greater in 1910 than in 1900, for both men and women, in all classes of the population, with the single exception of foreign born white males. Some facts regarding the average duration of marriage which end in divorce were also presented by the Government's investigators. They found that the largest number of divorces occur four years after marriage or at the beginning of the fifth year. From that period the proportion decreases until after twenty years of married life only 12.1 per cent. of divorces occur. Drunkenness usually attains its greatest relative importance as a ground for

divorce between the twentieth and twenty-fifth years of married life.

Even the law's delays and the time required before a decree could be granted did not prevent 46,639 couples from obtaining divorces before the end of the first year of marriage, many of them being obtained before the year was a little more than half gone. In a large number of other cases the persons who obtained decrees had been separated at least three years before the action was commenced. Marital relations in such cases had entirely ceased to exist, mutual selection and free choice, the basic elements of true marriage, had disappeared, and every tie to which the civil or ecclesiastical law could give its approval had been severed.

It is a remarkable fact that in all the divorces granted in this country between 1887 and 1906 only 39.8 per cent. of the couples concerned had any children. This should be of special interest to critics of liberal divorce laws, who ask—"What is to become of the children of the divorced?" As a matter of fact, in nearly two cases out of every five there were none, and this lack of children among those who seek divorce seems to be increasing. Investigation has actually revealed that one of the growing causes of divorce is the refusal of many wives to bear children, and in some cases the objection of husbands to having any. It may be added that children appear more frequently in divorce suits instituted by the wife than in those brought by the husband, and in such instances they appear most often in actions in which drunkenness is the principal charge. In such cases, as in most other divorce proceedings, the children are much

better off when given into the custody of either parent than if compelled to be reared in an atmosphere of discord and contention.

An examination of court records led to the discovery that of the vast number of divorce cases tried in the twenty years ending with 1906 only 15 per cent. were contested, and in many instances the contest was a mere formality. Whenever there was a contest it was usually made by the wife. Cruelty headed the list of contested cases with desertion at the foot. Alimony was granted in only about 13 per cent. of all the cases, and the significant statement was made, that *in more than 80 per cent. of the actions brought by women alimony was not even asked for.*

According to the census bulletin entitled "Statistics of Women at Work," it appears that more than half the divorced women in the United States are self-supporting. In a large number of cases they are also supporting children. In view of this fact, one can hardly escape the suspicion that the great majority of American divorces are really separations by mutual consent. The events which have led to these separations are beyond the power of any census enumerator to determine. The truth is that legal divorce can never be more than an approximate index to the actual divorces of the population, or, in other words, the divorce cases which are recorded annually can only represent a fraction of the estrangements, separations and offences against the marriage bond which never come before the world.

The economic changes of recent years, it may be remarked, have affected wives to a greater degree than

husbands, and this may possibly explain the increased proportion of divorces granted to wives in the North. It may also account for the lower rates of divorce among white women in the South. The Government report of 1909 comments on this as follows: "Intelligent white women in the Northern States have a greater degree of independence than white women in the South; that is, they have more opportunities to obtain employment and are more accustomed to the idea of earning their own living. This may influence their attitude toward divorce by making them less dependent upon their husbands for support and more ready to dissolve the marriage tie when it becomes a cause for unhappiness or suffering."

There are probably other reasons. In the South, for instance, the old-fashioned ideas of chivalry and the dependence of women as the weaker sex still survive with other conservative features of social life. The double standard of morality, it has been asserted, also exists to a greater extent in that part of the country, the crime of infidelity being generally regarded as more serious among women than among men.

In contrast to this, the changed character of modern living, in the Northern States, which has taken away from a large class of women the protection formerly given by a secluded home-life, has tended to increase the proportion of divorces granted to husbands, in that division of the country, on account of the infidelity of wives. Such, at least, is the opinion of investigators.

Generally speaking, another effect of economic progress has been the greater opportunities afforded to the laboring classes throughout the country, as the result of

improved means of transit and a lower cost of travel. This has undoubtedly had some influence on the divorce rate, by making it easier for men to desert their families. On the other hand, the greater opportunities for women to become self-supporting and independent serve to explain the increasing number of cases in which wives desert their husbands.

It was found to be impossible to obtain complete data regarding the occupations of divorced persons; but, from the partial information collected, the official investigators were able to say that actors and professional showmen figured in the largest number of divorce cases in proportion to their numbers. Then came musicians, teachers of music, commercial travellers, and a variety of other callings, while miners, quarrymen, farmers, blacksmiths, clergymen and agricultural laborers ended the list in the order given.

As to the social elements which furnish the most divorce cases, there is ample proof that certain popular notions on this subject are far from correct. It has been stated by certain writers and public speakers, for example, that divorce is most prevalent among the rich. Others have asserted that not only extreme wealth, but also extreme poverty, is responsible for the unrest and laxity which lead to the divorce court. Neither of these statements, however, appears to be in accordance with the facts, although it cannot be denied that extreme poverty and extreme wealth have often been factors in the breaking up of homes.

The truth is, that even in States where restrictive divorce laws exist the great majority of people who obtain

divorces are people of comparatively small means, and much the same may be said of States where liberal divorce laws are in force. Even the most casual investigation will show that the court records are not filled chiefly by the suits of the very poor or the very rich. It may be added that cheap as divorce actions are in some States, they are still beyond the means of the actually poor. Moreover, the poor usually patch up scores of quarrels which would lead to separation among those less dependent on each other. This does not necessarily mean that the poor are more moral than the rich because they do not seek divorce, for, as certain reliable observers have pointed out, desertion and bigamy usually take the place of divorce among this element of the population.

In discussing this subject recently, a writer in one of the Western magazines remarked: "Divorce is not a question of superior and inferior morality, but of necessity and opportunity. Poverty imposes certain virtues as wealth exposes certain appetites, but the basic ethics of rich and poor as classes is very much the same. When a husband in the higher social ranks is in a position to be sued for substantial alimony, or the wife has means of her own, a little tiff or a slight misunderstanding very often leads to the lawyer's office. Poverty, on the other hand, as often heals the breach due to an affair of blows or a skirmish with flatirons. It might be a glorious thing if everybody were economically independent, but at least we should not make the mistake of assuming that morality in general and domestic happiness in particular are matters of dollars and cents."

Quite apart from the respective moralities of the rich

and poor, it has been found that among the well-to-do classes an important cause of divorce is the type of idle women who, with the passing of occupation in the home, have come to regard economic dependence upon men as a necessary consequence, and to look upon marriage as an economic vocation. Of this class of women—who have been denounced by writers of their own sex as “parasites”—Professor Howard has said: “There are thousands of women of the miscalled ‘better class’ who live in boarding houses and hotels in idle ease, or in homes where they are figureheads, whose only ambition in life is to be credited with respectability, and whose only occupation is to render sex service, mostly barren, to the husbands who furnish support as compensation. It is notably this class which provides divorce scandals in high life and renders the subject revolting to all right-thinking people.”

The matrimonial wretchedness caused by women of this class formed the subject of a recent magazine article, in which the writer, a woman, strongly condemned those mercenary marriages which have a subsequent divorce and alimony as their primary motive. This writer asserted that most of her sex marry because they want to be supported. “They want money, they want some one to foot their bills, provide them a place to live in, and do the rough work of life for them.” Of this class, the writer explained, there are two subdivisions. “By far the larger subdivision includes the women who give a fair return for what they get. The other consists of those who mean to give as little as possible in return—preferably nothing at all. This class is probably more numerous in this country than anywhere else on earth. There is a

section of this parasitical group who manage to get divorced, and who insist on getting from their former husbands every cent that can by any means be extracted from these luckless individuals. In return they give nothing at all, not even their presence and companionship."

The writer continued:

"These women are what I call the alimony hunters, and there are many of them. It has become indeed almost a recognized trade, this marriage-divorce-alimony business. The successful practitioner has a man working for her while she sits back and takes the product of his labor without even a 'thank you'."

After summing up the various ways in which such women manage to compel their husbands to support them, and eventually succeed in extorting money from their unfortunate spouses by legal means, this writer added:

"More than one man has given up his business, his home and his country, to escape from claims that had become too heavy to bear. In actual fact, the American woman who marries with the sole and simple idea of being paid for it—for that is what it comes to with the alimony hunter and the parasite wife—is the comparatively rare exception. She exists, nevertheless, and she is so greatly in evidence, so successful, so convinced of her own righteousness, so protected by the law as it stands, that she is of far more importance as a national fact than her mere number justifies.

"Alimony, in her case, seems to be considered as a sort of pension for having enlisted in the ranks of matrimony, such as a soldier gets for enlisting in the army."

The preponderance of certain causes of divorce, it may be further remarked, depends to a great extent on

social conditions and environment, so that an estimate which would apply correctly to one community would have to be materially revised in the case of another. As the result of an investigation of divorce conditions throughout the United States, however, the National League for the Protection of the Family has found that wives are responsible for most divorces. Of the causes that bring them into the divorce court the League has discovered that the most common are their ambition for dress and social pleasures, and an unwillingness to bear children. The selfish exactions of husbands are also responsible for many divorce suits, and among other important causes are quarrels over property, inadequate income, innutritious food, and the influence of vices. The League is convinced that the real reasons for seeking severance of the marriage bond are seldom given by complainants in divorce actions.

It is evident that the causes enumerated by the League are simply the result of underlying conditions. The social ambitions and demands of wives, for example, illustrate the increasing growth of luxury, and also the craving for independence on the part of women, to which reference was made in the opening chapter. Through such influences quarrels over property might naturally arise. Domestic trouble due to an inadequate income is one of the unfortunate results of the high cost of living, while social changes are responsible for the growing disinclination of men and women to put up with privations to which their forefathers were willing to submit. The mention of innutritious food as a factor in divorce seems to suggest that with the passing of the home, cooking is becoming a lost

art among large numbers of women who enter married life. The other causes of divorce mentioned by the League,—the influence of certain vices (presumably including intemperance, and the use of narcotic drugs), and also the disinclination of many women to bear children, have already been commented upon.

Mention has been made of the growth of divorce in the country districts. All indications seem to prove that this is another of those effects of social progress and the general unrest that it has occasioned. It was only recently, in fact, that a report of the Agricultural Department called attention to the advance that has been made in the standard of living among the farming population of this country. In a comparatively brief period social conditions have completely changed; and, according to the report, the women of the present age had either forgotten how to do the household work which their grandmothers performed on the farm or were becoming too proud to engage in it.

The lure of "society" has reached even to the farm, the report explained, and was much to blame for certain conditions which were described as "acute." The rising standard of living, it was asserted, is responsible, in a measure, for the women of the farm engaging in "social functions" which are incompatible with the performance of household labor. In commenting on the passing of former domestic industries, the remark was made that "the younger women seldom know how to knit." The report added: "Throughout the larger areas, the pride of the housewife in great stores of preserves, dried and pickled fruits, berries and vegetables, exists chiefly in

history, and dependence is placed mostly upon the local store for the products of the cannery and the evaporator." At the same time, it was admitted that the productive wealth of the American farming population had shown an enormous increase which, to a certain extent, compensated for the higher standard of living. These social factors which are more or less productive of discontent in married life may probably account for a large proportion of the divorces originating in the rural districts.

Among those who have made a careful study of American divorce conditions there seems to be a general opinion that one of the greatest causes of matrimonial failure is the early, unwise marriage. In writing on this subject some years ago, Professor Howard was inclined to believe that "bad marriages" were, in fact, the real heart of the divorce problem. "I mean by this," he said, "marriages not legally but sociologically bad, and these include frivolous, mercenary, ignorant and physiologically vicious unions. They embrace all that would be forbidden by Francis Galton's science of eugenics; all that might in part be prevented by a right system of education. Indeed, bad marriages are the cause of the clash of ideals. At present, men, and more frequently women, enter into wedlock ignorantly, or with a vague or low ideal of its true meaning. The higher ideal of right connubial life, of spiritual connubial life, often comes after the ceremony. It is *ex post facto*; and it is forced upon the aggrieved by suffering, cruelty, lack of compatibility, 'prostitution within the marriage bond.' An adequate system of social and sex education would tend to establish

such ideals before the ceremony. ‘An ounce of prevention is worth a pound of cure.’”

These views of Professor Howard have been indorsed by judges throughout the United States. They have expressed the opinion that bad marriages of the class referred to are responsible for much divorce, and especially the hasty marriages of young people who have been insufficiently acquainted with each other. Most of the other reasons for divorce given by judges who have discussed this subject of late indicate more or less superficial observation, and are therefore of little practical value. One of the Chicago judges, however, who has had several years’ experience in divorce proceedings, has compiled a table of causes upon the large number of cases that have come before him, which, although at variance with other impressions and assumptions, nevertheless seems plausible enough. Furthermore, as it is based upon the experience of a presumably careful and competent observer, it can be accepted perhaps as approximating actual conditions in Chicago and other cities where social environment is about the same.

From these Chicago statistics it appears that in a majority of cases domestic trouble was due to the interference with husband or wife by a mother-in-law. As a reason for divorce, of course, this would have had more value if some light had been thrown upon the usual cause of the interferences which parted husbands and wives. The judge has found that hidden disease stands next in importance as a cause of estrangement, and this undoubtedly obtains some corroboration in other quarters, especially from those reformers who are endeavoring to

have medical examination made a legal preliminary to marriage. Unduly early or hasty marriages have also led to many divorce suits in Chicago as elsewhere, and the rupture of numerous unions could be traced to the interference of children who objected to a parent's contracting a second marriage.

According to this judge, such causes as ungovernable temper, intemperance, and the use of opium and other drugs, are less frequent in divorce proceedings. His statement regarding intemperance coincides, of course, with what has already been said in this chapter, and although Prohibitionists are likely to doubt the correctness of such estimates, it is to be remembered that they are naturally prone to exaggerate the evil effects of alcohol. In commenting upon the frequency with which fathers desert their children, the judge has observed that mothers seldom commit this crime. From that he concludes that the average woman is far better than the average man so far as affection for offspring is concerned. It cannot be disputed, of course, that the man who deserts his children is a bad man, but not a few extremely bad men would not do it, and a woman is not necessarily proved worthy to be called "good" simply because she obeys the strongest of her primary instincts and endures anything rather than the culminating pain of being parted from her children.

Some interesting observations on the causes of divorce have also been made by Judge Aspinall of the New York Supreme Court. In summing up the result of his experience, he has found that the average divorce case is usually based on one of the four following grounds:

unduly sensual natures of men and women, the extravagance of women, combined with lack of household management, interference of mothers-in-law, and hasty marriages. He believes that if some check could be put upon early marriages, and men and women could be compelled to postpone marrying until they were in the thirties, there would be far less divorce. As to the general growth of divorce in the United States, Judge Aspinall, who is an impartial observer, is convinced that it is not due to any decadence of humanity, but that people unhappily married will no longer suffer in silence as their ancestors did. The increase of economic independence among women, he thinks, has given them a far higher degree of self-respect; consequently, the increase of divorce may really point to a better condition of things.

The Divorce Proctor of Kansas City, Missouri, who has supervision of the numerous divorce suits instituted in the local courts, agrees with the findings of the National League for the Protection of the Family. To feminine love of dress he attributes a large percentage of domestic troubles which end in the divorce court. This has been especially noticeable in the cases of women who were self-supporting before their marriage. After the novelty of married life has worn off a woman oftentimes begins to think of the independence she previously enjoyed, when she had a weekly wage and was able to buy pretty clothes. She finds it increasingly hard to ask her husband for money, and if she has no children she eventually decides to go back to work. Then she begins to look upon her husband as a burden, and the ultimate result is a suit for divorce. This, again, serves to illustrate the

increasing strain that modern economic conditions put upon the marriage bond. It also furnishes some support to the arguments of those who assert that, with the lessened importance of domestic duties, not only the husband but the wife should find work outside the home.

Investigation has shown that college women are apt to marry late in life or to avoid marriage altogether. A judge of wide experience in divorce matters has discovered that *only one college-bred woman out of fifty-seven ever gets into the divorce court, while one out of eleven or twelve non-college women figures in divorce proceedings.* The training of college girls, he believes, and their higher average of intelligence, tends to develop tolerance. He has also found that widows and widowers seldom appear in divorce cases unless children interfere, their experience probably having taught them that absolute compatibility is impossible, and that it is wise to make the best of human conditions. As to the weak points of the two sexes, this authority asserts that women magnify the molehills of domestic conditions into mountains and commonly seek divorce on trivial grounds. Men do most of the big, bad, moral offending against marriage; women do the little nagging, petty offending. Women have better morals and worse dispositions than men. That so many divorce actions should be brought on the ground of incompatibility he does not consider at all surprising, especially where such proceedings have been the result of hasty marriages.

Even under the best conditions, says this judge, many couples begin married life in entire ignorance of each others' views and often with widely differing standards,

conditions which in the end are bound to result in a strong cause of utter incompatibility. Co-education and the entry of women into business life are therefore strongly approved by him, as tending to give men and women a better knowledge of each other under normal conditions, providing them with a wider range of selection in matters matrimonial and thus lessening the risk of their contracting unwise marriages.

Summing up the general situation in the United States, it may be said that underlying most of the causes to which the growth of divorce has been attributed may be traced the effect of the social changes discussed in preceding chapters. In no other country has this process of social evolution encountered fewer obstacles, and hence the rapidity of its advance, with its consequent pressure upon the family; while, at the same time, there has been less opposition in the form of convention and tradition than has been met with in older countries. The increasing growth of individualism has also been more pronounced in the United States than elsewhere, for it is the fundamental ideal of American justice and freedom that no institution shall be regarded as more sacred than the individual. Therefore, in the adjustment of marriage to modern conditions, the whole tendency has been to effect a transformation without any sacrifice of this inherent principle.

This view of the divorce question has been taken by Professor James P. Lichtenberger of the University of Pennsylvania, the author of a recent work on divorce. In discussing the modern idea of marriage, he argues

that with the increasing recognition of the civil contract theory and the growing appreciation of individual rights, there is destined to come an even greater freedom of divorce. He remarks further that "Coercive maintenance of voluntary marriage, where all natural ties have been severed, is coming to be regarded with the same degree of abhorrence as we now look upon coercive marriage in the past, whether of wife-stealing or wife-purchase, or the later forms of *manus* or husband ownership. To dissolve such loveless marriages is considered less immoral than to permit their continuance. The enlightened consciousness rebels against compulsion in sexual relations, regarding it as a species of rape as revolting within the marriage bond as it is without."

VI

LEGAL EXPERIMENTS

THE OBJECT AND EFFECT OF SOME RECENT AMENDMENTS TO STATE LAWS

HAVING considered the general subject of divorce in the United States and the causes of its rapid growth in recent years, it is of interest now to learn something of the various attempts that have been made to remedy existing conditions. The principal churches, as already observed, have taken a decided stand in opposing the spread of divorce, which they regard as a national evil, and siding with the churches are certain public reformers who take precisely the same view. Opposition from these sources and others has had an important influence on legislation, for within the last twenty years many changes have been made in State divorce laws, over a hundred statutes having been enacted with a view to effecting improvements in such laws. And while this legislation has been partly due to the exigencies of an older civilization in conflict with new conditions, there can be no doubt that it has been more or less guided by prevalent discussions of the divorce question.

A careful examination of amendments to divorce laws shows that while the majority have dealt with the grounds of divorce rather than with its restriction, the general

tendency has been in the direction of greater stringency. Nevertheless, the fact that in spite of all restrictive measures the divorce rate continues to mount seems to furnish conclusive evidence that the causes responsible for increasing divorce cannot be modified or removed by any process of law. The underlying influences that have been discussed in previous chapters are obviously beyond the control of any legislation, for it has been well said that human nature cannot be changed by statute.

Whether, indeed, the laws always represent public opinion is by no means certain. In the praiseworthy desire to abolish what appear to be evils, laws have sometimes been impulsively enacted, and yet, as we all know, these supposed evils continue to flourish. As an example of this, certain features of the legislation against trusts might be mentioned. A great deal of divorce legislation has been conducted in much the same way. Possibly, in certain States, a feeling has existed in influential quarters that divorce is an evil, and that laws should be passed to suppress it. But experience has shown that any check which follows is only of a temporary character and, in the end, the divorce rates mount higher than ever. Perhaps, after all, this is simply an illustration of the truth that real public opinion will eventually assert itself in spite of the laws.

In their attempts to check the growth of divorce, most States which have amended their laws, in recent years, have shown the tendency to reduce the grounds on which actions can be based. Others have endeavored to make divorce less desirable, by placing certain restrictions on the remarriage of divorced persons. Before 1888 ten

States had some restrictions on immediate remarriage, and since then no less than eighteen have imposed such restrictions. In some cases this is only for six months or until the time for appeal has expired, but more often it is for one year or more.

Some States have prohibited lawyers from advertising to procure divorce, and have made this a misdemeanor. Others have amended their divorce laws so as to provide for the appearance of the State's Attorney in cases in which the defendant is not represented, in order that the plaintiff may be properly examined in the interests of the State. Objections have been made to this plan, and some lawyers have asserted that the State has no more right to be represented in a divorce proceeding than in any other civil suit. It is significant that in 1890 the legislature of Vermont repealed a provision of this kind.

In the last twenty years thirteen States have increased the term of residence necessary for the institution of divorce suits, the increase having been chiefly from six months to one year or more. Here, again, a difference of opinion exists, New Jersey, for example, having reduced the term from three to two years, while the District of Columbia raised its term from two to three years.

In other States only feeble attempts have been made to deal with the divorce problem, the legislatures apparently realizing that law-making cannot remedy the conditions responsible for increasing divorce. In some cases, here and there, a minor cause has been stricken out of the divorce laws, and now and then one has been added, such as the habitual use of morphine, opium and other drugs.

The necessity for such an amendment as this illustrates what has already been said concerning the pressure of our modern civilization, as exemplified by the spread of the opium habit and similar vices. Idaho and Utah have added insanity to their causes, and several other States have found it necessary to reduce the period of desertion or neglect requisite for obtaining an absolute decree.

One of the most commendable features of American court procedure in divorce cases is the rule, which is becoming general, of preventing a public hearing of suits in which evidence of an indecent character is introduced. In such cases it has become customary, in most States, for judges to exclude all persons from the courtroom excepting officers of the court, the parties to the action, their witnesses and counsel, and to require the evidence, when filed with the clerk of the court, to be sealed. Unless an exception is made by special order, such evidence can be exhibited only to the parties interested in the suit. In New York and Pennsylvania, to avoid publicity, cases are frequently heard in private before referees appointed by the court.

Among other innovations introduced in divorce procedure the appointment of a Divorce Proctor by Missouri is entitled to mention. It is the duty of this officer of the court to put some check on divorce by investigating doubtful cases and, if the facts warrant it, advising their rejection. This is an adaptation of the English idea of the King's Proctor, whose duties are similar. Many divorce-seekers from other States, it appears, had been going to Missouri, and after a short residence there had obtained divorces. In the year preceding the appoint-

ment of the Proctor, there were 1,224 divorces granted in the local courts and at one session of the Circuit Court in Kansas City, Missouri, for example, twenty-seven decrees were granted in a little over two hours. No defense was offered in twenty-four of these cases. The Divorce Proctor now reports that under the new system only 881 decrees were granted in the year just ended, while some forty or fifty cases ended in reconciliation.

In the State of Washington a system of "temporary divorce" has been introduced, which permits an estranged couple a certain time in which to become reconciled, if possible, before a decree is made absolute. This State has also adopted another good idea, which applies to the children of the divorced. It has been often remarked by writers on this subject that it is extremely difficult for a man, even if he occupies a seat on the bench, to decide justly in many divorce cases where children are concerned. Sometimes it seems absolutely necessary that a decision should be made from a woman's point of view. This fact has been recognized by the Washington legal authorities. In a recent divorce case in that State, in which there was a contest for the guardianship of a child, three women sat with the judge and exchanged views. The four eventually concurred in granting an absolute decree for cruelty and awarded the child to its mother.

To enter into a discussion of the peculiarities of State laws, of laws that conflict, and the attempts that State Legislatures have made to solve the divorce question by legal enactments, would fill a large volume. A concise summary of the divorce laws of the various States has, however, been inserted as an appendix at the end of this

book. For the purposes of the present chapter a few of the more interesting features of State divorce laws may be mentioned.

Investigation shows that cruelty is generally recognized in the United States as a ground for divorce, only New York, South Carolina, North Carolina, Virginia and West Virginia having failed to include this cause in their statutes. As to what constitutes cruelty, however, a wide difference of opinion exists. The author of a recent work on divorce laws, in commenting on the usual attitude of judges in the Eastern States, remarks that "among people of the lower class it is a common practice for husbands to administer corporal punishment to their wives when the latter have been at fault, and the courts take this custom into consideration. If a workingman under the influence of liquor gives his wife a mild cuff or two when he comes home, the court will probably regard the husband's conduct leniently. If, on the other hand, she is frail, weak, or in delicate health, even a slight assault might entitle her to divorce." It is almost needless to observe that even "a mild cuff" would not be tolerated by the courts of most Western States, where, apparently, different ideas of the rights of womanhood prevail.

As a further illustration of this difference of opinion, the same author points out that in a case in Georgia a divorce was granted because one married person had thrown water upon the other. In Illinois, strangely enough, a husband's threats of casting his wife downstairs and his failure to provide assistance during child-birth were held not to constitute cruelty. In some States threats and blows were unable to secure divorce, while in others

the mere use of insulting or threatening language was sufficient.

As to other causes, a reference to the Appendix will show that forty-three States grant divorce for desertion, seven for insanity, thirty-nine for conviction of a felony, thirty-six for habitual drunkenness, and twenty-two for failure to support. Illinois grants divorce for "attempt to poison spouse." Four States—Missouri, Vermont, Wyoming and Washington—consider vagrancy or indignities to be sufficient causes for an absolute decree. In three States—Kentucky, Massachusetts and New Hampshire—divorce is granted when one of the parties has united with any religious organization, such as the Shakers, whose doctrines are opposed to marriage. Special statutes in Maine, Massachusetts and Rhode Island authorize the granting of divorce in cases where husband or wife is a victim of opium or other drugs. In Virginia the fact that the wife has been a prostitute entitles the husband to an absolute decree, and in Florida the possession of a violent temper is included among the statutory grounds.

As to other causes, a reference to the Appendix will have amended their divorce laws so as to cover cases in which sexual diseases have ruptured the marriage bond. Some courts, however, have held that the communication of such a disease by one spouse to another must be wilful in order to constitute ground for a divorce. For example, in one case the fact that a husband had suffered from syphilis was not regarded as entitling the wife to divorce, because it appeared that the husband had not been aware of having the disease, or had good reasons to believe that he was cured. On the other hand, various sexual outrages

committed by husbands on their wives, which it would seem should be sufficient to entitle the aggrieved party to divorce, have also been frequently disregarded as grounds for legal relief. To such conditions as this the progress of the women's movement is certain to put an end.

The list of States, it will be noted, shows that Washington has had the distinction of attaining the highest divorce rate. As a matter of fact, Washington has a much easier divorce law than even Nevada possesses, 513 decrees being distributed annually among every hundred thousand married people in that State. In Washington, in addition to the usual Western causes—one year's desertion, habitual drunkenness, non-support, felony, incurable insanity, cruelty or indignities rendering life intolerable, "other grounds" may be considered sufficient by the court. It seems probable, therefore, that a large number of divorce-seekers from other States may be attracted to Washington, although its divorce colonists are never heard of. The liberal divorce law of this State has not escaped the attention of Bernard Shaw, who has commented on it in his introduction to "Getting Married." In his peculiar, ironical style, he remarks:

"In the State of Washington, where there are eleven different grounds for divorce and where, in fact, divorce can be had for the asking, at a negligible cost, the divorce rate is only 184 per hundred thousand of the population, which means less than one per cent of domestic failures." This is not very alarming: what is quite hideous is, that the rate in England is only 2, a figure which, if we assume that human nature is much the same in London as in Seattle, must represent a frightful quantity of useless unhappiness and clandestine polygamy. When journalists, and bishops and American presidents and other

simple people describe this Washington as alarming, they are speaking as a peasant speaks of a motor car or an aeroplane when he sees one and for the first time. All he means is, that he is not used to it and therefore fears that it may injure him. Every advance in civilization frightens these honest folk. This is a pity; but if we were to spare their feelings we should never improve the world at all."

It would be interesting to learn Mr. Shaw's opinion on the divorce rate in Utah, for contrary to what might be supposed, while elsewhere divorce has been increasing, this State shares with Connecticut the distinction of having a divorce rate which has lessened in twenty years. Under former conditions this might have been attributed to the prevalence of polygamy which obviated the necessity for divorce, and possibly the influence of Mormonism may have had some effect on the present reduction of the divorce rate.

Mormons, of course, indignantly deny that polygamy exists in Utah, but this contention has been vigorously combated by Frank J. Cannon, former United States Senator from that State, and Harvey J. O'Higgins, in their recent book, "Under the Prophet in Utah." Even to-day, they assert, members of the church—and Mr. Cannon was formerly a Mormon himself—frequently entice young girls into plural marriages and under family and religious influences the girls are induced to yield. After such a marriage a young woman finds that the children born in her supposed wedlock are not legitimate; she has no marriage certificate, for a certificate would be evidence that her husband had become a polygamist. Too late, she finds that she is a concubine and that her children

have no name. Hence the "new polygamy" in Utah, according to these authors, assumes a dark aspect that never characterized the polygamy of the old days, for the old type of "honest polygamist" has gone. Such are the facts that Mr. Cannon presents, but the Mormon authorities, nevertheless, have repeatedly stated that such conditions do not exist.

To bad marriage laws has been attributed much of the divorce that has taken place in recent years, but investigation seems to disprove this theory. Comparatively few changes have occurred in the marriage laws of the United States since 1886, and most of these have been made in regard to matters which could have little or no effect on the divorce rate. These amendments have included the raising of the age at which minors can marry, prohibitions regarding the marriage of whites and negroes and the insane, and also certain provisions designed to prevent the remarriage of divorced persons until a definite interval has elapsed. The prohibition last named has been included in the laws of eighteen States. In the District of Columbia the law permits only the innocent party in a divorce for adultery to remarry. California prohibits divorced persons from marrying anywhere within a year, by granting only an interlocutory decree at first, and the final decree one year later. Montana, Maryland, Maine and South Dakota are the only States which have amended their restrictions in regard to remarriage.

Thus far, thirty-five States have adopted statutes to prevent the marriage of the defective, most of which are intended to disqualify insane persons and epileptics, confirmed drunkards or those addicted to the use of certain

drugs. In New Jersey, for example, the law requires that any person who has been confined in any public asylum or institution as an epileptic, insane or feeble-minded person shall not be allowed to marry without a certificate from two reputable physicians that he or she has been completely cured of such defects, and that there is no probability that such person will transmit any defect or disabilities to the issue of marriage.

New York has also taken a part in this movement for the prevention of the propagation of the unfit. With this object the legislature has appointed a Procreation Committee, consisting of three physicians, whose duty it will be to examine into the mental and physical condition and the record and family history of the feeble-minded, epileptic, criminal and other defective inmates confined in the State hospitals, reformatories, charitable and penal institutions. If in the judgment of the majority of the committee procreation by any such person would produce idiocy or imbecility, and there is no probability of an improvement in his or her condition, then the committee is authorized to appoint one of their number to perform such operation for the prevention of procreation as shall be decided to be most effective. All remedies under this law, however, are subject to review by the Supreme Court.

The trend of public opinion along eugenic lines has been, for the past few years, in favor of legislation looking to the protection of the public against transmissible diseases, by requiring on the part of persons about to marry, either an affidavit or certificate of a physician that one or both are free from any such disease. Indiana, Michigan, Utah and Washington have had such a law for

three or more years; North Dakota, Oregon, Pennsylvania and Wisconsin passed such a law in 1913. The Pennsylvania act has not yet been passed upon by the higher courts.

Iowa requires reports of venereal diseases like other contagious diseases to be made to local Boards of Health, and penalizes persons thus afflicted if they knowingly assume the risk of transmitting such maladies.

Michigan is the only State in which the law has been in operation sufficiently long to test its efficacy. Investigation seems to show that for certain reasons it has had no practical value thus far. In Wisconsin the law is practically a dead letter because of the impossibility of enforcing it. In the first place, it decrees that marriage licenses shall be issued only to those who present certificates from reputable physicians, declaring that the holders are sound in all respects. It also requires that these certificates shall be based on the most searching laboratory tests, although it fixes the doctor's fee at only three dollars.

In criticising the law, the Wisconsin State Medical Society pointed out that the medical tests required would involve six or seven experiments costing ten or fifteen dollars each. The law, moreover, was declared by its opponents to be unconstitutional, because it discriminated against males, the medical certificate not being required from females. The objection was also raised that it interfered with the religious liberty of the contracting parties. The Supreme Court of Wisconsin, however, held the act to be constitutional.

All reports seem to indicate that, under present conditions, the enforcement of such laws is so difficult that,

although they are theoretically excellent, they are not likely to have much practical effect. Therefore, it is probable that the only hope of improvement in this direction must rest on the influence of education, on the direct action of the parties to be married, and the supervision of parents, pastors and physicians. It is fully realized that the evils of certain venereal diseases are of a grave character, not only because of their wide prevalence, but because their serious effects are not confined to the persons who marry but are transmitted to their offspring.

An attempt has been made recently by several States to raise the status of marriage, and more especially by the improvement of the marriage license laws. At the present time licenses are required in all States and Territories excepting Alaska. In California and New Mexico both parties contemplating marriage are required to appear and be examined under oath or submit affidavit. Stricter requirements are now generally made in regard to age, consent of parents and the officials who may perform the marriage. It is possible that a comparative study of European systems may suggest other features that can be adopted in this country with good results.

Two States—Massachusetts and Vermont—have recently adopted what is called the Uniform Marriage Evasion Act, which was drawn up by the Conference of Commissioners on Uniform State Laws. This law prohibits “any person residing in this State from going into any other State or country, and there contracting a marriage prohibited by the laws of this State. If contracted, such a marriage shall be null and void.” Efforts are being made to have all the States enact the law. If this is

accomplished, no State official will be permitted to issue a marriage license to a person from another State without satisfying himself that such person is not prohibited from intermarrying by the laws of the jurisdiction where he or she resides.

The fact that public opinion is beginning to recognize the serious evils which follow hasty, unwise marriages, especially of young people, has been shown by the increase of laws designed to prevent the far too common practice of rushing into matrimony. Certain States are still lamentably backward in this respect, but it is to be hoped that before long steps will be taken to abolish our Gretna Greens. At the present time, there is a tendency on the part of newspapers to take a humorous view of what are really disgraceful conditions. As an example of this, a Sunday newspaper of large circulation, not long ago, devoted a whole illustrated page to an account of the doings of a certain Indiana "justice," who was said to have married three thousand couples, mostly runaways. "He has an electric light sign," said the article, "announcing that he is available at all hours. The jolly justice marries all comers, old and young, rich or poor, and no embarrassing questions are asked." In Jersey City similar "marriage mills" were recently in operation, and touts were even employed to solicit the patronage of those who contemplated matrimony.

It will be recalled that several judges have expressed the opinion that hasty marriages have proved a fruitful source of divorce in this country. Much is heard of the failure of marriage, but considering the careless and irresponsible manner in which it is so often contracted,

it is surprising that it has attained even its present measure of success.

From the facts that have been presented it is clear that the legislation that has taken place in regard to marriage could have had little or no effect on the divorce rate. And the same may be said of most of the recent divorce laws which have been enacted. Only four groups of States, in fact, have made changes in their divorce laws that could have had any direct bearing on the divorce rate and these, for the most part, are not of the first importance. As a rule they have comprised provisions for the serving of notice on the defendant, the rules for conducting a suit, regulations concerning previous residence and the statutory grounds for divorce. On the other hand, the attempts of certain States to restrict the remarriage of divorced persons are founded on the supposition that the majority of people get divorced in order to remarry, and that by placing restrictions on such remarriages the divorce rate will be greatly reduced. According to foreign statistics, the only ones obtainable from which conclusions can be drawn, it has been found that divorced men and women are not much more disposed to remarry than widowers and widows after the death of wife or husband. Furthermore, of the divorces granted between 1867 and 1906 only 12.7 per cent were obtained in less than a year and a half after separation, while 72.2 per cent ranged between one and five years.

While, however, the majority of divorce suits are probably not brought with a view to remarriage, there is undoubtedly a large number in which remarriage is the principal object. In discussing such cases and the effect

of restrictive divorce legislation on couples who have lived apart, Professor Lichtenberger has rightly pointed out that "the chief result of divorce legislation of this nature is either to hasten divorce after separation in order that the parties may be free to remarry or to defer marriage and thus increase the probability of sexual irregularity." In most States such laws as these have had no effect on the remarriage of divorced people, while in a majority of cases such remarriages have increased.

As an illustration of the fact that laws tending to restrict divorce may indirectly lead to immorality, conditions in South Carolina have often been cited. The divorce law of this State was repealed in 1878 when the rate was about 1 per hundred thousand population, and at the present time there is no law whatever respecting divorce. *Yet, by statute, South Carolina has had to limit to one fourth of his estate the amount which a citizen of the State may bequeath to his concubine or her issue.*

Reference has been made to the remarkable difference which exists between the divorce laws of the various States. As is shown by the summary of divorce laws, given in the appendix, their variations range from the law of New York with its one statutory cause to that of Washington with an unlimited number of causes. Owing to the conflict of State laws, decrees are frequently granted in certain States and rejected in others, so that a divorced man may be legally remarried in one place and yet be regarded as a bigamist somewhere else. Commenting on this amazing conflict of laws, a recent writer has observed that while the Constitution of the United States provides that "full faith and credit shall be given in each State to the

public acts, records and judicial proceedings of every other State," this is emphatically not the case in respect to divorce matters. In no other branch of the law, he adds, does there exist such a tangled mass of conflicting decisions, yet nowhere is there a greater need of uniformity.

It was for the purpose of bringing American divorce laws into greater harmony through State legislation that the uniform divorce movement was started a few years ago. In 1906 a Congress on Uniform Divorce was held in Washington, D. C., forty-two States and Territories being represented by over a hundred delegates. The whole divorce situation having been thoroughly discussed, it was the sense of the Congress that as a Federal divorce law, requiring constitutional amendments, would be impossible, the only way to reach uniformity was by the action of the various States. As the result of its deliberations, the Congress drew up a model divorce law, and this was subsequently submitted to the various State Legislatures with the understanding that it would be subject to any amendment any State might wish to make. In this proposed uniform law the following causes for absolute divorce were named: (1) Adultery, (2) Bigamy, (3) Conviction of crime in certain cases, (4) Extreme cruelty, (5) Wilful desertion for two years, (6) Habitual drunkenness for two years.

In defining the third and fourth clauses, the following statements were made:

"Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, for at least one year: *Provided*, That

such conviction has been the result of trial in some one of the States of the United States, or in a Federal Court, or in some one of the Territories, possessions or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

"Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe."

It was also recommended that fraud or collusion in attempting to obtain divorce should be made statutory crimes, and that every divorce should be brought in the State in which the cause of action occurred, thus putting an end to migratory divorce-seeking.

Thus far, only three States—New Jersey, Wisconsin and Delaware—have adopted the uniform law. As adopted by Delaware it includes as grounds for divorce: infidelity, desertion, cruelty, habitual drunkenness, bigamy and certain felonies. Wisconsin has added insanity of either party.

In the resolution adopted by the Congress on Uniform Divorce it was asserted that a widespread movement for the restriction of divorce exists in the United States and that "as the result of the discussion of this subject there is a well founded belief that a part of this increase in divorce, attended with special evils and scandals, is due to the lack of a divorce law uniform throughout the nation."

That such uniformity is desirable cannot be denied, for the present conflict of laws has had many deplorable results; but that uniformity would have any effect in

checking divorce or lessening the causes of divorce is to be doubted. In the first place, the changes made in the divorce laws of most States in recent years have been precisely of the character which the Congress recommended; but what is more important is the fact, already emphasized, that the great underlying causes of divorce are absolutely beyond the power of any legislation to control.

VII

NEW YORK'S DIVORCE LAW

ITS RESTRICTIONS ON DIVORCE AND SOME OF ITS DEPLORABLE RESULTS

PUBLIC opinion, at the present time, is sharply divided on the general question of divorce. And there is an equally wide difference of opinion in regard to divorce laws. According to the conservative view, divorce being a national evil should be suppressed as much as possible, and for this reason restrictive laws are believed to be direct promoters of public morality. Those who hold this opinion point to the high rates of divorce in certain Western States where divorce is easily obtained, and they insist that easy divorce laws not only encourage the growth of divorce but give rise to conditions which are unquestionably bad. On the other hand, those who believe in freedom of divorce—and this includes certain sociologists who have made a careful study of underlying conditions—have taken an entirely different view, and are strongly opposed to all restrictive measures. Such is the attitude of Professor Lichtenberger, to whose work on divorce reference has been made. He says:

"Under existing conditions, arbitrarily to diminish the number of divorces would be to increase immorality and crime. The proper point of attack for those who wish to check the

tide of divorce is the causes rather than the results. Improvement in general conditions of social life and the facilitating of the adjustment of the family to modern conditions will be of real value in lessening the divorce rate. Repressive measures are likely to do more harm than good."

Facts, however, as already remarked, are usually more convincing than mere arguments. To discuss the good or bad points of laws that facilitate or restrict divorce is simply to express certain opinions: to examine the actual working of such laws is not only more practical but in every way more fair. It was this idea which led the author to make a thorough study of divorce conditions in two States, in one of which a restrictive law is maintained, while in the other divorce may be secured with comparative ease. In both cases the facts have been impartially presented in order to give a clear idea of the operation of these widely different laws which represent two equally different types of public opinion.

The first of these laws to be examined is that of New York State. Not only does the Empire State possess an antiquated divorce law and one almost unmatched in its severity, but, added to this, New York City's enormous foreign population contributes an element which even cities like Chicago are not called upon to face. New York City is also our most important social centre. It is to be further remarked that with a population of nine millions New York State presents some peculiar phases of divorce which are evident in no other State. Notoriously backward in the matter of divorce law reform, this State furnishes more important divorce cases than any other part of the country, while it annually supplies a host of migra-

tory divorce-seekers to the divorce colonies of the West. Investigation has shown, in fact, that in recent years over 18,000 citizens of New York obtained divorces in other States.

The history of the New York divorce law is as interesting as it is brief. It furnishes an illustration of the effect of English law on the earlier statutes of our older States. Upon the settlement of North America by English colonists the laws in force in England at that period became the common law of this land, and in accordance with English procedure absolute divorce could be obtained only by recourse to the Parliament of England. After the Revolution, when each State formed its own statutes, the English law of Colonial times exerted some influence on the framing of divorce laws. The New York law is probably a relic of pre-revolutionary days, with the exception that instead of making divorce dependable on the legislature, this power has been transferred to the civil courts.

In spite of the severity of the New York law, it is significant that it has given rise to more scandals than have occurred in States where the laws of divorce are quite liberal. The reason is obvious. The law grants divorce for one cause only—adultery—and no matter how fairly a man or woman may be entitled to an absolute decree for other reasons, this relief is denied. On this account, it is not surprising that many mismated and wretched people have resorted to illegal means in order to obtain their freedom; and experience has shown that wherever stringent laws are in force such conditions are bound to arise. The New York law thus presents a striking example

of the effects of restrictions on divorce. It is an example that should serve as a warning to States where liberal laws exist, and cause them to pause before embarking upon any reactionary legislation.

The severity of the New York law has undoubtedly led to a large amount of collusion on the part of husbands and wives who wish to separate, but who find they can obtain their freedom only by one of them—usually the husband—furnishing technical proof of infidelity. It is partly owing to this fact that a certain class of New York attorneys have made a specialty of divorce cases, and most of them are ready to assist collusive litigants in evading the law.

The advertisements of divorce lawyers can be found in various New York newspapers, offering advice to those seeking freedom from matrimonial troubles, either in judicial separation or divorce. As a rule, the advertisers announce that they are ready to undertake the settlement of domestic troubles and confidential matters, which will be disposed of "quietly and quickly." As an inducement, they usually add, "free services until successful." It will be noticed that nothing is said about divorce. The New York law, it seems, prohibits a lawyer from advertising to get divorce cases; so this is ingeniously circumvented by the use of such phrases as "domestic troubles," "embarrassing entanglements," or "family difficulties." One advertiser also informs the public that "A Reno attorney with New York office explains domestic relations law."

To the average New Yorker the existence of these divorce lawyers is perhaps unknown; for the only people,

as a rule, who would be likely to notice their advertisements are those who are quite unfamiliar with the ways of the law. Such was the position of a young New York business man who was unhappily married and anxious to be divorced. In the end, he employed a reputable attorney by whose advice he eventually obtained a divorce in one of the Western States. At the beginning, however, he was led to make inquiries among certain divorce lawyers whose advertisements he had noticed. His case was somewhat unusual. He had married a pretty and frivolous young woman who, after making his life almost unbearable by her conduct, had refused to live in New York and had gone to Montreal. She was a Canadian. He was obliged to support her because there were no grounds for divorce under the New York and Canadian laws. He thought she might be persuaded to agree to a divorce, but that could not be arranged in Canada, where, in most instances, an absolute decree can be obtained only by Act of Parliament, a long and expensive proceeding. Adultery, furthermore, is the only cause recognized by the Canadian laws. Strange to say, in practically every instance, after hearing his story the lawyers urged this divorce-seeker to arrange a collusive case in New York.

"Persuade your wife," said one of the lawyers, "that a divorce would be best for you both. If she consents, we will have the papers made out—summons and complaint—showing you have been guilty of the statutory offense—infidelity—and will send the papers to Montreal for her to sign. Then we will start proceedings and file the papers. After a short time, your wife will come down to New York, and I will meet her and act as her

attorney. You, of course, must keep out of the way. If you start the case, you will have to get some woman, merely as a matter of form, and go to a hotel, where you will register as man and wife, in order to provide the legal cause. You will be shadowed by a detective, you will be identified by other witnesses, and this evidence will be used against you.

"The case," he continued, "will be tried in Brooklyn, because cases heard in the Supreme Court over there attract far less attention than those tried in Manhattan. They are also reached much sooner for trial. The whole thing will be over in a month or two, and the case will be disposed of in fifteen or twenty minutes. Including witness fees, the expense will not be over two hundred and fifty dollars. So you can see that when it comes to divorce New York is really cheaper than Reno and certainly much quicker, providing you arrange a good case."

When this prospective litigant asked the lawyer why so many people went to Nevada when divorce could be obtained collusively in New York, the reply was: "People go to Nevada sometimes to get fraudulent divorces. A woman, for instance, may go out there unknown to her husband, and may serve him by publication, the advertisement being inserted in some obscure paper where no one interested is likely to see it. Or a man may send his wife to Nevada to get divorce, being afraid that if a collusive case were tried in the New York courts it might be detected and thrown out, or, if successful, the facts might be published in the newspapers and injure him in business. But in these days people don't care so much

about such things as they did years ago, and the average man certainly doesn't consider that."

"But don't the courts ever suspect these cases of collusion?" asked the divorce-seeker.

"Well, no," answered the lawyer—"that is, unless the collusion is mismanaged and is hopelessly apparent. The judges cannot be constantly searching for evidence of collusion; they are too busy. There were a couple of cases thrown out of court quite recently, but they were bungled. A judge may suspect something is wrong, but in most cases what can he do? How is he going to prove collusion if a case is properly presented? From the evidence submitted he simply knows that the defendant has violated the law and that the plaintiff is entitled to a divorce, and there is the end of it."

In the course of his inquiries, this litigant called on a divorce detective and questioned him regarding the advisability of arranging a collusive case. The detective, who does a great deal of legal investigating, including divorce matters, took a somewhat different view from that of the lawyers.

"Of course," he said, "collusion is widespread in obtaining divorce in New York, otherwise the courts would not be so crowded with divorce cases. But the thing has to be managed very carefully, and cases are thrown out of court sometimes on account of the collusion being too evident. I actually knew of a case where a lawyer employed detectives to shadow a man for the benefit of the wife, a collusive divorce having been arranged; and the husband, before entering a hotel with a woman companion, turned round to see whether the shadows were

following him. He even berated them because they didn't follow him quickly enough and asked them what they supposed he was hiring them for! Now, what sort of witnesses would they be if they were cross-examined by the judge? Besides that, supposing, as in your case, a man's wife was in Montreal and he committed the statutory offense while she was there, and evidence was obtained in order to save time—the fact of her absence might leak out and ruin the case. It would certainly look very suspicious that the shadowing was done while she was away from New York. And yet some lawyers will take such risks."

"I always warn people to look out for those cheap advertising lawyers if they want a good, collusive case," added the detective. "If a man wants to get evidence against himself he had better employ a competent 'inquiry agent' to get it. We can do our part of the business and the lawyer can attend to his. But if anyone tries to practice economy in cases of this kind the whole thing is sure to be bungled."

Some detectives were ready to go to even greater lengths in procuring evidence, for one who was consulted by this divorce-seeker advised him to place his wife in a compromising position and thus be enabled to sue her. This detective even proposed an ingenious and despicable scheme with this end in view, declaring that he had known of several cases in which divorces had been obtained by such means.

Reputable lawyers to whom these facts were submitted agreed that the number of collusive divorce cases tried in the New York courts is much greater than is generally

supposed. Consequently, those who are accustomed to regard the New York divorce law as sound in ethics and morals, particularly churchmen, will be surprised to learn how commonly its provisions are evaded, not only by collusive suits, but by irregular relations outside of wedlock. Lawyers who are competent to discuss this matter vary their estimates as to the amount of collusion which takes place, but all admit that it is practiced more or less.

Collusive cases, however, are not the only means by which a certain class of New York lawyers manage to thrive because of the present restrictive law. There are some indeed who resort to criminal practices in order to extort money from their clients. This fact has been commented upon by the author of a recent work on divorce who is also a lawyer. As he remarks, most of the lawyers who make a specialty of divorce cases and who advertise for patronage are a very unenviable class of men. They are looked down upon and despised by the reputable members of the legal profession. He adds: "Not only are divorce lawyers often flagrantly tricky and extortionate, but the bolder ones also at times resort to blackmail. The fear of publicity or exposure is the club which they often hold over their shrinking victims. A favorite plan of operation—one among many—is to enter the decree *nisi*, or interlocutory decree of divorce, which is not ordinarily effective until some months have passed, the time being fixed by the statute, and after the lapse of this time to tell the divorced person that the final decree of divorce has been entered when in fact it is not. The duped client may afterwards innocently contract a second marriage and

later be informed by the divorce lawyer that he is a bigamist. Then, to avoid exposure to the second spouse, or to avoid a threatened prosecution by the first spouse (a threat possibly of the lawyer's own concoction) the victim is ready to pay a handsome sum."

Considering that infidelity is the sole ground for divorce under the New York law, the increasing number of divorce cases tried in the courts of New York would lead the casual observer to suppose that more immorality exists in the Empire State than in any other part of the country. Careful investigation, however, shows such a supposition to be erroneous. It is true the Government report has shown that while sixty per cent of the divorces granted in the United States were for cruelty and desertion, all those granted in New York were obtained on the sole ground of adultery. But this does not really prove that the citizens of New York are more immoral than those of other States, unless compelled to be either actually or confessedly in order to obtain freedom from the marriage bond. Commenting on this fact years ago, Chancellor Kent remarked, after his long career on the New York bench, that he believed adultery was sometimes committed for the purpose of obtaining divorce because it could be secured on no other ground!

From the facts that have been presented it is clear that a restrictive law such as New York's may lead to wholesale collusion, perjury and other immoralities which are actually prevented by the liberal divorce laws of other States. Then, too, there is the appalling frequency of wife desertion among New York's poor—desertion being the poor man's method of divorce; and even worse than

that is the prevalence of bigamy. There is also the astounding disparity in the treatment of the rich and poor in divorce matters. The cost of divorce proceedings in New York is absolutely prohibitive to the poorer classes, or if they do manage to raise the money their cases are tried in open court. Litigants who have ample means, on the other hand, may have the evidence taken secretly by referees without any danger of publicity. A poor litigant has thus to face publicity which people of wealth manage to avoid. In this respect the courts of New York grant to the rich a protection that is denied to the poor.

In spite of its restrictive law, New York for more than half a century has been the scene of the greatest divorce scandals. Some of the most remarkable of these were connected with the once notorious firm of Howe & Hummell—a firm of criminal lawyers who for over twenty years were a menace to the community. Howe & Hummell represented a class of lawyers that once flourished amazingly under the New York divorce law, figuring conspicuously in all kinds of shady proceedings. Millions of dollars passed through their hands in the palmy days when anyone who wanted a collusive divorce or the suppression of a blackmailing plot went to the office of this firm.

Howe & Hummell not only had an enormous criminal practice but the civil end of the business included divorce cases, matrimonial differences, breach of promise, alienation of affections and similar actions. These brought in, it is said, \$300,000 a year, while the annual office expenses did not exceed \$25,000. Howe—"Big Bill Howe" as he was popularly known—managed the criminal depart-

ment, while Hummell—"Little Abe"—was an expert in divorce. Hummell's alliances with actresses, playwrights and divorcees kept his name in the front more than that of any other lawyer in New York. He wrote several plays, one of his productions, "A Woman's Hatred," being based on his experiences in the divorce court. Another was entitled "A Case Out of Court."

A complete story of Howe & Hummell's divorce practice would fill a large volume, representing as it did the dark doings of the former underworld of New York. It is sufficient to add that five years after the death of Howe, his partner Hummell became involved in a case of perjury and subornation of justice in connection with an important divorce suit. After a most sensational trial, he was convicted and sentenced to five years' imprisonment. As the result of this the firm ceased to do business and the old era of New York divorce lawyers came to an end.

The irregularities which enabled Howe & Hummell to flourish have been largely abolished in New York divorce procedure although, as already shown, divorce lawyers who encourage collusion are still in existence. But in these days, it is only fair to say, the New York courts are more strict in requiring papers to be regularly served on defendants in divorce suits, while in former times there was great laxity in this respect. The courts have also become rather suspicious of detectives as witnesses. Recognizing this fact, most detective agencies nowadays will agree only to shadow a man to a hotel and to notify the plaintiff in the action that the defendant is there. The plaintiff is then supposed to get decent, reputable

witnesses to testify to that which the detective has discovered.

Another deterrent of collusion is the fact that most cases are tried in open court and witnesses are obliged to sign their testimony. This gives the judge an ample opportunity to investigate their bona-fides. In addition, there is a rule making decrees interlocutory, so that they are not effective until a certain interval has elapsed. By this means a defendant is given a chance to protest if an improper divorce has been obtained, and if there is such evidence the case can be reopened. Again, a correspondent has the right to interpose a defense, serve an answer and cross-examine witnesses. Judgments by default are not permitted as in times past.

Notwithstanding these improvements in procedure, collusion, adultery, perjury, bigamy, injustice and evasion of the law are still some of the bitter fruits of the present New York divorce law. And these iniquities are all traceable to the fact that absolute divorce is granted for adultery alone.

Even those who have made only a superficial study of the subject must have met with men in New York whose lives have been wrecked by the impossibility of procuring divorce. Most lawyers of good standing have probably heard of cases of this kind for which there is absolutely no relief supplied by the law, because absolute divorce—positively the only adequate remedy—could not be obtained in the absence of the sole statutory ground.

In one instance which was brought to the author's attention, a man of excellent character employed in a New York printing establishment consulted a lawyer re-

garding the possibility of obtaining divorce. His wife had openly confessed that she had committed adultery, taunted him about it and challenged him to get proof if he could. She drank to excess and assaulted him. "I'll do as I please," she boasted. "You have no evidence and the courts always side with the woman. What chance will you have even if you try to get a separation?" Incredible as it may seem, this man could not get a divorce because he was too poor to employ a detective agency to shadow his wife. He could not even get a judicial separation because there were no actual witnesses to his wife's assaults, as required by the New York law. In this condition he was dragging out a wretched existence, and worst of all, his two children were being brought up in this immoral atmosphere.

In another case, the wife—worthless and idle—was accustomed to lie in bed half the day reading trashy, erotic novels while her husband was at work. She would scarcely attend to even the simplest household duties. She had been a typist before marriage, but afterwards asserted frankly that she meant to rest for the remainder of her life in order to make up for the few years she had been obliged to work for a living. Almost every day she disappeared until late in the evening, always refusing to say where she had been or what she had been doing. At times, she went away for a day or two on the pretext of visiting friends. Her husband had every reason to believe that she had been in company of men, but he also was too poor to employ detectives to get evidence. His wife laughed at him, insulted him, and made his life a curse, thus preventing him from properly attending to

his work. In a Western State he would have had no difficulty in getting an absolute divorce, but in New York he could get no relief, not even a judicial separation. Most people have usually heard only the story of the ill-used woman, but the flagrant injustice of the New York law is quite as gross in the case of the wronged man.

From the woman's point of view the conditions are just as harsh. In New York there is no relief for the woman whose husband has been convicted of crime and perhaps sent to prison for life. Nor is there any hope for the woman whose husband becomes incurably insane. Such women may be in their first youth, but the New York law declares that they must be bound for life unless they can take advantage of the liberal laws of the West. Men may desert their wives in New York and go to distant parts of the country, disappear and perhaps commit bigamy. Their unfortunate wives are often left destitute with children to rear, but they can never find worthy husbands and be safe. Their children may be torn from them—as the slave children were torn from their mothers a couple of generations ago—and sent to charitable institutions. These women are compelled to work for their daily bread and for the sake of the scoundrels who have deserted them the New York law forces them to remain deserted, forbids them to remarry. On the other hand, a woman might desert her husband and as long as he had no proof of her infidelity he could get no proper relief, and she could even blackmail him by making him contribute to her support.

That the New York law gives encouragement to "parasite" women who marry for mercenary reasons alone,

seems to be proved by the following letter which recently appeared in the *New York Times*:

STRINGENT DIVORCE LAWS

Enable Unscrupulous Wives to Blackmail Their Husbands

To the Editor of the *New York Times*:

Professor Willcox in showing how our divorce laws or lack of laws work a hardship, mentions that it puts a premium on unhappy marriage and by increasing bigamous marriages.

Does it not also give to unscrupulous women a dangerous power to practically blackmail? At present all a young woman has to do is to inveigle an elderly man with real property into a marriage by protestations of affection and those arts so well understood by women, and later making demands upon him and leaving him, thus tying his hands as far as his real property is concerned.

Take my own case for instance. Two years ago I was the owner of considerable property heavily mortgaged. One day my wife, to whom I had been married but a year, remarked to me: "I want you to hurry and sell this property and give me my half." Somewhat surprised, I said: "There is no half coming to you until I die, and then you can have it all." Then my wife remarked: "You cannot sell this property." She then, together with her mother, proceeded to pick quarrels over frivolous matters, and eventually left my house after reiterating her demand that I make a division of my property. She has kept away from me, refusing to see me when I called upon her or attempted to do so, refusing to answer any letters from me, keeping absolutely silent, evidently relying upon her strangle hold upon me to compel accedance with her demands. The result is that I cannot borrow or sell to protect myself, the mortgagees are foreclosing and I will lose everything simply because I fell a victim to the wiles of a woman

who I thought had affection for me. The law protects her and will do nothing for me, and only by a circuitous and expensive course can she be circumvented.

ELDERLY HUSBAND.

Under the antiquated New York law, it may be added, several causes still exist for which a man can be imprisoned for debt under a civil process, one of them being for failure to pay alimony. On this charge there are always several men, in New York City, confined in Ludlow Street Jail. So notorious has the situation become that the newspapers commonly refer to these prisoners as the "Alimony Club." It has been estimated that nine thousand men in New York are paying alimony at the present time, and taking \$35 a month as a fair average the total yearly payments reach the amazing sum of \$3,780,000.

It has been said that the people of any country usually get the sort of laws they deserve to get, but even the severest critic of New York would hardly go so far as to say that the present divorce law fairly represents the intelligence and progress of the Empire State. There is a widespread impression in other States that New York is lacking in public spirit, which may be due perhaps to the cosmopolitan character of its population. But while this may partly explain the remarkable lethargy of New York in the matter of divorce law reform there are undoubtedly other reasons for the absence of any legislation on this subject. One of these reasons is probably the great pressure exerted by certain ecclesiastical influences which oppose any reform whatever. These have been brought to bear upon the political leaders of New York to a far

greater degree than has been possible in most other States.

It is not generally known that the model uniform law, described in the previous chapter, was submitted to the New York Legislature in 1906 by the Committee on Marriage and Divorce of the Conference of Commissioners on Uniform Divorce. No action was taken at that time, and although the advocates of reform have called attention to the matter for the past eight years, the model law seems to have been permanently shelved.

Most of the New York judges, it should be added, are not only in favor of the proposed uniform law, but are anxious for the adoption of some plan which will prevent the continual clashing of State laws in matters of divorce. Several Nevada decrees have been declared invalid by the New York courts recently, and in one case there was a clash with Missouri. In this instance, the wife of a New York man obtained a Missouri decree and remarried, whereupon the husband brought a suit in New York and also obtained a decree. The couple had one child, which was awarded to the mother by the Missouri courts, while the New York decree gave the husband the custody and declared the Missouri divorce to be invalid. In another case, a man who had obtained a Nevada divorce returned to New York and remarried, the result being that he was arrested, tried, and imprisoned for bigamy. His lawyer pointed out, when it was too late, that if he had only taken the precaution to cross the river to New Jersey and marry there, he could have defied the courts of New York.

Owing to this remarkable conflict of laws, a man may

be at one and the same time married in New York, and yet be legally single and entitled to marry again in Nevada and possibly other States. A New York man who ventures to remarry after his wife has gone to another State and there divorced him may be convicted of bigamy in New York. Fourteen years after separating from his wife, a New York man may obtain a decree of divorce in Connecticut and remarry, but eighteen years after the divorce may find—according to the courts of New York, later upheld by the United States Supreme Court—that he is still the husband of the first wife. Nor are these the only instances in which the New York courts have been criticized for their failure to recognize the decrees of other States. In some instances, divorces obtained in other States, by persons fully entitled to them, have been set aside by the New York courts, and children resulting from marriages following such divorces have been rendered illegitimate.

Judges, of course, cannot be blamed for the evil effects of the laws they are obliged to enforce, but in some cases it would almost seem as if the New York courts were unduly severe in their interpretation of the divorce law. It was only recently that *The Globe*, one of the more conservative New York newspapers, called attention to this subject in the following editorial:

OUR DIVORCE LAW AT WORK

In a country like the United States, where there is one divorce for every twelve marriages, it is safe to infer that divorce is often in the thoughts of a great many persons. The absolute safety of the inference becomes plain to anybody who keeps

his eyes and ears open. He has only to read and listen. Yet, undoubtedly, there is a minority of persons to whom the whole subject is so repugnant that they hate to think about it.

Even they, however, must now and then feel that all is not well. The news, now and then, compels them to stop and think. Take, for example, such an item as appears in all the papers to-day. A woman confesses in court that she has been unfaithful to her husband. The court rules that the husband's suit for divorce must be dismissed unless more testimony is introduced.

Now, it is well known that collusive divorces are not uncommon in New York. But whenever the husband and wife tell the truth in court, whenever they make it plain that the unfaithfulness of one of them has convinced both that a divorce is desirable, then they fail to get their divorce. The effect of the New York law is to make divorce difficult unless there is bitterness and hatred between the parties, unless one of them desires to continue a relation which has become odious to the other, or unless they lie skilfully enough to keep the court from suspecting that neither of them wishes to go on living with the other. We do not see how anybody can be satisfied with the results of the existing law.

Among New York lawyers who are familiar with the divorce question there is some difference of opinion regarding the advisability of a national divorce law. The majority undoubtedly favor a uniform law and agree, very generally, that it should include, as grounds for absolute divorce, infidelity, habitual drunkenness, conviction of a felony, insanity, desertion, failure to support, and conduct rendering life intolerable. It is recognized that a Federal law could not be enacted because it would be an infringement of the rights of States that could only be remedied by an amendment of the Constitution. Other

lawyers are opposed to uniformity. Their idea is that the experience of each State will eventually prove invaluable, because it will show just what results have been obtained by various methods of divorce. This experience, they believe, may eventually lead to uniformity in the divorce laws by agreement of the States, and being based on practical experience this would be far more desirable than any arbitrary law founded on mere theory.

VIII

PROBLEMS OF THE POOR

THEIR ADJUSTMENT IN THE NEW YORK COURT OF DOMESTIC RELATIONS

A NOVEL attempt is being made in New York to deal with those matrimonial troubles among the poor which, under present conditions, lead so often to wife desertion—the poor man's method of divorce. It was with this object in view that the Court of Domestic Relations was established about four years ago, at which time it was the first court of its kind in the United States. So successful has been its work that Chicago has already copied the idea, and it is being studied carefully by other large cities.

This court, which is unique, was brought into existence in 1910 by an act of the New York Legislature, based on the recommendations of an investigating commission. From evidence that was taken it was shown that domestic troubles resulting seriously and irremediably had increased to such an extent among New York's poorer classes, that the police courts were utterly unable to cope with these matters. The Domestic Relations Court was therefore designed to have complete jurisdiction over such cases of this type as are practically of a minor criminal character.

Anyone who is interested in social problems can spend a day profitably in this remarkable court; while a study of the cases that come before it will give a wide range of knowledge concerning the darker side of matrimony. Perhaps no other city in the world can provide such a scene as may be witnessed daily in the little courtroom in East Fifty-seventh Street. At nine o'clock every morning the benches are invariably filled with representatives of the principal nationalities inhabiting the East Side. There will be seen frowzy, undersized Russian or Polish Jews, Italian women wearing bright-colored shawls, a swarthy Greek or two, a few Irish and Germans, some negroes of various types, and possibly some neatly dressed young men and women who may have been immigrants at one time but have been transformed and Americanized. In the body of the courtroom snatches of conversation in half a dozen languages will be heard, and as many of the men and women who appear before the court are unable to speak English, there is plenty of work for the official interpreter.

To obtain material for this chapter, the author spent a few hours in the Court of Domestic Relations, seated beside one of the magistrates, Mr. R. C. Cornell, and watched him dispose of the cases that came before him in rapid succession, over twenty being settled at the morning session. Husbands and wives who, in some cases, had been separated for months, met face to face in this courtroom, most of them held together by only the most sordid of reasons, absolutely without affection and oftentimes filled with the bitterest hatred for each other. "Ill-assorted couples," as Charles Dickens once said, "unhappy

in themselves and each other, bound together by no tie but the manacle that joined their fettered hands, and straining that so harshly in their shrinking asunder that it wore and chafed to the bone."

As a police magistrate, it may be added, Mr. Cornell has had over thirty years' experience in dealing with the woes of the poor and criminal classes, and is therefore exceptionally well fitted for adjusting a class of cases requiring a thorough knowledge of life in the tenement districts.

Some idea of the work of the court can be gained from the following facts: During 1914, 3,924 cases were heard by the presiding magistrates, only 74 of the defendants being females; 1,752 men were released on their promise to do better and 1,328 were put under bail to provide for their families; 269 delinquent husbands were sent to the workhouse because they could not get bail; 1,411 were arrested on warrants; 1,874 appeared on summons.

Magistrates of this court have summary jurisdiction. They may send cases to trial in another court if they see fit. If, after hearing a case and consulting with the probationary officer, the magistrate decides that there is fault on both sides, he may give some advice and order both parties to report a month or so later. The principal effort is to make peace, whenever possible, and to suggest some means for preserving peace. Should the magistrate decide that the home conditions revealed at a hearing are injurious to the children, he may commit such children to an institution to await an improvement in affairs.

The plan of placing the complainant and defendant

before the magistrate, to make statements and refute anything that one or the other may say, has had very satisfactory results. Many timid women who would have shrunk from the publicity and odium of a police court have been encouraged to seek in the Domestic Relations Court the relief to which they were entitled. This court is chiefly a woman's court, for the great majority of the complaints are made by wives whose husbands have failed to support them.

A brief summary of the cases which were heard by Mr. Cornell during the morning when his court was visited will give a very good idea of the sort of domestic troubles which are brought up for adjustment.

The first case was one of non-support. The couple, as in all cases that followed, stood facing each other before the magistrate's bench. The man looked like what he probably was, a loafer. He had a black eye and had evidently been drinking. The wife, a quiet, decently dressed woman, told the magistrate that they had been separated three times, that her husband would not work, and that they could not live together. He would contribute nothing towards her support. Both were under middle age. Questioned by the magistrate, the husband said that he was willing to live with his wife, but she interrupted his remarks. "Never again will I live with that man," she told the magistrate. So the defendant was put on probation and ordered to pay his wife seven dollars a week.

The next couple who appeared were Russian Jews, undersized people, the man mild-mannered and speaking broken English, the woman evidently a shrew. On their

own confession, they had lived a most unhappy life together. The husband, a butcher's assistant, was earning fifteen dollars a week. The wife said she had received no money from him for nearly a year. They had two children.

The husband, in reply, declared that he was a much abused man; that his wife was seldom at home when he returned from work and she was not economical. When he complained, she answered: "America is a free country. I can do as I please here. If you don't like it, go to the devil."

Incidentally this remark serves to throw some light on the immigration problem. It shows the tendency of many immigrants, who have endured petty tyranny in the land of their birth, to mistake license for liberty in this land of the free. This has been frequently noticed by the magistrates of the Domestic Relations Court.

Another serious phase of Jewish life was revealed by the testimony of the man in this case. "My mother-in-law," he said, "told me we had better separate and advised me to go to a rabbi and get a ghet" (a decree of divorce after the ancient law of Moses laid down in Deuteronomy). "We talked over things at the rabbi's and my wife got some kind of paper, and when we went back my mother-in-law ordered me out of the house, and said my wife had got a divorce."

Cases of this kind are frequently happening among Jews of the lower class, usually recent arrivals in this country. Having obtained a ghet from a rabbi, a man or a woman has sometimes married again, believing the ghet to be a legal divorce, and has been prosecuted for

bigamy. The ghet, or course, is simply a separation of a religious character and has no legal authority whatever.

The husband in this case evidently took the ghet seriously, although he did not attempt to remarry. He left his wife and agreed to pay her four dollars weekly. He was also willing to provide for the children, who were with the mother-in-law. Under cross-examination, both husband and wife showed plainly that they were averse to living together. They had already been separated three times. When asked by the magistrate whether they would make another attempt, they glared at each other and shook their heads. Seeing that reconciliation was impossible, the magistrate released the husband on probation and ordered him to pay his wife five dollars a week.

A well-dressed young couple, neither of them over twenty-five, next appeared before the bench. They had not been married long but had quarreled about the furniture of their little flat and had parted. The wife, who had been a widow with one child at the time of her marriage, said tearfully that her husband had ill-treated her little one. When questioned by the magistrate, the young husband muttered some excuse and ended by admitting that he was in the wrong. "This is a case for reconciliation," said Mr. Cornell. Whereupon one of the probation officers took the young couple aside to reason with them while the work of the court went on. After a short chat they left the courtroom together, their misunderstanding apparently ended.

A sad contrast to this happy ending was presented by the next case. A decently dressed young woman appeared, but her husband was not present. An officer of

the court informed the magistrate that the man was in the alcoholic ward of Bellevue Hospital recovering from excessive drinking. "I'm glad he is there," remarked the wife. It was evidently a hopeless case; the man a confirmed drunkard. The couple had one child. After the wife had stated the facts, the case was adjourned until the husband could be released from the hospital.

A well-dressed young man with spectacles, who looked like a student, next appeared before the magistrate with his wife, an attractive young woman. Both were Jews. The young husband had been born in Roumania, he said; his wife had passed most of her life in New York. They had been married two years and had been separated about a year by mutual agreement. The wife, who was earning twelve dollars a week, in a novelty store, said that her husband had not contributed anything towards her support since they parted.

Called upon to explain, the young fellow, in good English, told quite a remarkable story. He had been a clerk in a drug store, he said, and while studying pharmacy had fallen in love with the pretty, blue-eyed cashier, his present wife. "At last," he continued, "we agreed to have a trial marriage and so we just lived together to see how we could get along. We didn't agree very well so at last we decided to part. Before doing so, my wife begged me, for her mother's sake, to go through a regular form of marriage." This he did, thinking perhaps, as so many other people have thought, that the marriage ceremony would have some magical effect in healing their differences. Instead of that, it changed his wife for the worse, the defendant said. "She became abusive," he

explained, "slapped my face several times and insisted that I should help to support her parents." Then they parted. His wife was now a student at a New York university, working for the degree of Bachelor of Science. As for himself, he had left the drug business and was now a law clerk and a student at a law school. He was earning hardly any salary. Since parting, his wife and he had carried on a mild flirtation and had visited back and forth, although unwilling to live together as man and wife.

Evidently disgusted with these triflers, Mr. Cornell dismissed the case. "Yours is not a matter for this court," he said. "If you want a judicial separation you will have to go to the Supreme Court."

A middle-aged couple, the husband a teamster irregularly employed, were next called. The wife, a typical "hard-working woman," said they had four children, and that her husband had not contributed anything towards her support for several months. The man, a burly, good-natured and probably shiftless Irishman, smiled as he listened to his wife's story. He told the magistrate that he had been out of work for some time, but had a job in prospect. He was quite willing to live with his wife and support his family. His wife, he explained, was impatient and quick tempered and that was probably why she had brought him into court. "Sure, she's always got a kick coming," he added, with a laugh, "but she's all right." After some compliments to the judge, and some tactful blarney to his wife, he was released on probation.

A negro couple, under middle age, unusually well dressed and intelligent looking, next appeared. They had

been married eight years and had been parted about six months. The husband, so the wife said, had failed to support her and had refused to live with her. Called upon to explain, the man said that he had been a waiter, but had recently bought a vacuum cleaning machine for \$150, to be paid for in installments, and had started in business as a carpet cleaner. That took all his spare money, and prevented him from supporting his wife. He made various conflicting statements, and whenever cornered by the magistrate smilingly replied that he could not exactly remember. "There is evidently a vacuum somewhere in your memory," remarked Mr. Cornell ironically. After much questioning, both husband and wife being plainly reluctant to explain the real cause of their separation, it appeared, at last, that the defendant had formed an illicit attachment outside his home. Forthwith he was ordered to pay four dollars a week towards his wife's support. He objected, and suggested that as times were hard two dollars should be enough. "Even a dog would be worth more than that," remarked the magistrate severely. "You will either pay the sum ordered or go to the workhouse."

A remarkable example of the mixture of races on the East Side was presented by the next case. The wife, a young Jewess, said that her husband, an Italian, had deserted her and that she had two children likely to become public charges. As Mr. Cornell signed a warrant for the man's arrest, he asked the wife how she had been married. "By a rabbi," she replied, and explained that upon his marriage her husband had been received into the Jewish faith with all due rites.

A Jewish couple, accompanied by two lawyers, were the next to relate a story of marital woe. They had been married about two years and had separated. The wife was working as a milliner; the husband was only partially employed as an art-glass worker. After conferring together, one of the lawyers told the magistrate that possibly an agreement could be reached. In the meantime, the defendant was ordered to pay four dollars weekly towards his wife's support.

According to the magistrates, the Jewish cases are usually more perplexing than any others which come before the Domestic Relations Court. In many instances, the men and women commit perjury in open court, and it is extremely difficult to get at the truth. The Jews of the lower classes seem to have a craze for litigation, and no matter how poor they may be, they usually employ lawyers as in the case just mentioned. Therefore, disputes which could otherwise be settled in a few minutes are complicated in this way, and the interference of the lawyers wastes time. On this account, Mr. Cornell believes that much unnecessary work might be saved if the Department of Charities made preliminary investigations and sent brief reports of the facts to the magistrates.

In the next case, a young couple of uncertain nationality appeared. The woman, unhappy looking and slatternly, carried an unclean baby. Her husband, a thick-set, muscular young fellow, was blear-eyed and unkempt. By means of a little store the wife had managed to support herself, but was now barely earning enough to pay the rent. The husband, when at work, earned fifteen dollars a week at some mechanical work. They had been married

eight years. He refused to live with her. The man admitted the truth of most of the accusations. The papers in the case showed that he had been to prison on a criminal charge. He had also been in the Domestic Relations Court before. After a brief examination he was ordered to pay his wife five dollars a week and was released on probation.

Another Jewish couple appeared next, accompanied by two lawyers, and their knowledge of English being limited the interpreter was summoned. Their story was soon told. They had been married in Russia nine years ago, and had parted five years afterwards. The husband had emigrated to this country and had been in New York about four years. His wife had recently arrived. They had one child. The husband was a butcher's assistant and said that he did not know how much he earned. When questioned, he made evasive replies. Through the interpreter the woman declared that her husband had another wife. For that reason she had refused to live with him. The man denied this, and said that he had not known of his wife's arrival until a week before. When he found her he had given her five dollars. Statements by the woman and denials by the husband followed in quick succession until the magistrate adjourned the case. The defendant was released on condition that he should pay a certain weekly amount towards his wife's support.

Again a Jewish couple appeared and again, as in most of these cases, two lawyers accompanied them. With the exception of asking some unnecessary questions, wrangling with each other and wasting time, the attorneys did nothing for their clients. This couple had been mar-

ried in Russia and had been in New York only a few years. They had parted about eight months before. They had no children. Both made contradictory statements when questioned. The man, for instance, could not remember how much he earned or where he worked as a tailor. He told the magistrate that he went to the workshop "just by instinct." He was released on probation and ordered to pay his wife three dollars a week.

Then came another negro couple—the husband a 'long-shoreman—a case of non-support, speedily disposed of, the defendant being ordered to pay four dollars weekly. Then followed another Jewish case with the usual lawyers in attendance. The husband, a widower when he married, asserted that his second wife had treated his children cruelly. She denied the accusation. There was wholesale wrangling, wholesale contradictions and such perplexing evasions that the magistrate adjourned the case.

For three hours Mr. Cornell disposed of case after case in this manner. At intervals deserted women—whose cases were not heard—some of them carrying babies, obtained warrants from the magistrate for the arrest of delinquent husbands. All this was to be repeated during the afternoon, and thus it goes on from day to day in the overworked Court of Domestic Relations.

Whether or not any good purpose is served by temporary makeshifts, such as the reconciliations and other adjustments supplied by this court, is a question on which there may be much difference of opinion. In cases where there are children summary measures must certainly be taken to compel delinquent husbands to carry out their obligations. Even the most radical advocate of easier

divorce does not question the right of society to insist that a man shall provide for the children he has helped to bring into the world, and also for the mother of such children. On the other hand, in the numerous cases of childless couples, in which the wife is quite able to support herself and mutual aversion is plainly shown, it is to be doubted whether any forcible attempts to uphold the marriage relationship are to be commended.

The magistrates of the Court of Domestic Relations, out of respect for the existing New York divorce law, are naturally inclined to take a conservative view, and they assert that any easier or cheaper mode of divorce would result in wholesale immorality among a certain element of the poorer classes. One reason for this is that among the enormous number of immigrants who settle in New York there are many who have strange notions of liberty. Under any system of easier divorce, men of this class, it is asserted, would be constantly changing their wives. Furthermore, it is pointed out that the children of poor, unhappily married couples must also be considered. What is to become of them? The New York City institutions, it is said, are already overcrowded.

Any intelligent observer, however, who spends an hour or two in the Domestic Relations Court can hardly fail to reach the conclusion that it would be infinitely better to build more institutions to provide for the children of wrangling, mismated couples than to have them brought up amidst scenes of squalor and degradation. As some of our sociologists have pointed out, it is cheaper for the State to bring up a child in an institution under moral

influences than almost surely to provide for a criminal in the future.

As to the evils which it is feared might result from a liberal divorce law for New York, these seem to be greatly exaggerated. It is a fact, moreover, that in certain Western States which have liberal divorce laws there is not to be found, in the large cities of such States, the degree of hopeless marital misery that exists among the poor of New York City. Fully half the couples who appear before the Domestic Relations Court would be entitled to divorce in such States, and on terms that would not be prohibitive. The fear that a certain class of unintelligent people might take an improper advantage of greater facilities for divorce is certainly a weak argument against the enactment of a reasonable law that would benefit the substantial and intelligent part of the community.

It may be added that the magistrates who preside in the Chicago Court of Domestic Relations, and who deal with the same class of cases as are tried in New York, have reached the conclusion that absolute divorce is the only satisfactory solution of certain matrimonial problems, even among the poor. In a recent review of the work of the Chicago court, Miss Tarbell says: "This conclusion has been forced upon Judge Goodnow and Judge Gemmill, both of them optimistic advocates of settling difficulties. 'I am convinced,' Judge Goodnow says, 'that more orphans are made by bad homes than by divorce,' and his opinion is the more valuable because he entered the court believing that divorce was an unmixed evil always to be discouraged." Miss Tarbell adds that

whoever watches the stream of wretched men, women and children filing through the courtroom, day after day, and hears their histories, tragic, comic, ignoble and pathetic, must break down under the strain of it. "It would seem as though a tidal wave of sordid woe had engulfed humanity."

According to a recent report of the Chicago court there were 2,796 cases tried during the first year of its existence, and in these there were only 61 women defendants. In the second year 3,699 cases were heard and disposed of. The statistics show that the causes of domestic trouble were as follows: excessive drinking, 46 per cent; immorality of husband, 12 per cent; immorality of wife, 2 per cent; ill-temper and abuse by husband, 8 per cent; ill-temper and abuse by wife, 3 per cent; venereal disease of husband, 12 per cent; interference of mothers-in-law, 6 per cent; interference of fathers-in-law, 1 per cent; youth of parties, 4 per cent; laziness of husband, 3 per cent; sickness, 1 per cent.

In reviewing these results Miss Tarbell says: "If there is one thing more than another that the daily revelations of this courtroom demonstrate it is the righteousness of divorce. Look at the causes of last year's separations quoted above—'12 per cent venereal diseases.' For the sake of the child, born and unborn, nothing but divorce is right when a cure is impossible. There are cases of incurable brutality, of abnormality and degeneracy where again for the sake of the child the only proper course is divorce."

In Chicago the various charitable institutions and other relief organizations apparently coöperate with the

court to a greater extent than is the case in New York. Some of these organizations keep a representative in the court regularly, and whenever it is possible they find employment for delinquent husbands willing to work, while also giving aid to destitute families.

Although the present magistrates of the New York Court of Domestic Relations are opposed to easier divorce, John J. Freschi, a well-known lawyer, who was formerly one of the judges of this court, has expressed a different opinion. As the result of his experience, he says: "There are disputes and grievances which can be healed by time; but I must admit that I have known many cases where couples were hopelessly mismatched and could not possibly live together. They have come before me and have patched up a truce; but after failing, have returned again and again. Such a life was ruining both of them. Sometimes the husband has given it up in despair, and has run away; sometimes the wife has disappeared. In such cases divorce seems to be the only remedy, and for that reason perhaps there should be, in the New York law, more grounds than adultery."

In discussing the problems of marriage among the poor of New York, the Rev. Percy Stickney Grant of the Protestant Episcopal Church has admitted that while divorce is more common among the well-to-do than among the poor, the latter do not expect of marriage so much as the rich expect. The simpler satisfactions of family life, says Mr. Grant, are sufficient for the poor, but the deeper bonds of mental sympathy, of spiritual relation, of wide social serviceableness, they rarely crave or develop. They are also more used to patient endurance than are the rich.

In a recent book, "Socialism and Christianity," Mr. Grant remarks:

"A judge of my acquaintance found that poor women, who, black and blue with bruises, to save their lives had their husbands arrested, were almost always unwilling, when the case came to trial, to appear against the men who had nearly killed them. It was my friend's practice to give such brutes three months in jail whether their wives testified against them or not. What woman in the upper classes would endure such treatment?"

"Desertion, not divorce, is the recourse of the poor. Bigamy is the crime of the working classes more than of the rich. I have never personally known a divorced person in the working classes. I have, however, known countless cases of bigamy.

"The facts show that among the poor there is not a superior morality, but that the rules of the game are not understood or observed. They will not go through the forms of legal release when they cannot endure legal ties. They take matters into their own hands and break the rules like children. All this is interesting to the evolutionist. It is quite as he would expect. The method of the working people in regard to marriage and divorce, instead of exhibiting a higher type of morality actually exhibits a lower type—it is a survival."

No one who sees the never-ending stream of wretched husbands and wives passing before the New York Court of Domestic Relations can fail to be impressed by the serious problem that it represents. Under the unwholesome influence of certain modern industrial conditions in our great cities, people of the poorer laboring classes are forced to live in tenements and flats, crowded together, without sufficient fresh air and sunshine and in circumstances that are destructive to health, happiness and good morals.

In some instances, especially under the sweating sys-

tem, wife and children toil with the husband in order to gain a subsistence, the wretched home being merely a place for eating, sleeping and working. Nor are matters much improved when married women, through hard necessity, are obliged to go out to work, for this also tends to destroy every vestige of home life. In one of his works on Socialism August Bebel, the well-known German writer, has discussed these economic conditions, and in the following passage has vividly portrayed the dark side of tenement life:

"Both husband and wife go to work. The children are left to themselves or to the care of older brothers and sisters, who themselves need care and education. At the noon hour the luncheon is eaten in a great hurry, provided the parents have time to hasten home, which in thousands of cases is impossible on account of the shortness of the recess and the distance of the place of work from the home. Weary and exhausted, they return home at night. Instead of a friendly and agreeable habitation, they find a small unhealthful dwelling, often devoid of light and air and most of the necessary comforts. The increasing tenement house problem with the revolting improprieties that grow therefrom, constitutes one of the darkest sides of our social order which leads to countless evils, to vices and crimes. And the tenement house problem in all the cities and industrial regions becomes greater each year, and embraces in its evils ever larger circles. The laborer's wife who comes home in the evening, tired and worried, has now new duties to perform. She must work desperately to set in order merely the necessities of her household. The crying and noisy children having been put to bed, the wife sits and sews and patches till late in the night. Intellectual intercourse and good cheer, which are so much needed, are denied to her. The husband is quite often uneducated and knows little, the wife still less. Therefore the little they have to say to each

other is soon said. The husband goes to the saloon and seeks there the entertainment which his home fails to supply. He drinks and however little it is that he consumes, it is too much for his circumstances. Under these conditions he probably falls a prey to the temptation of gambling, and loses more than he spends for drink. Meanwhile the wife sits at home and complains; she must work like a beast of burden. For her there is no rest, no recreation. Thus there arises disharmony. If, however, the wife is less true to her duties and seeks, in the evening after she returns home weary from her work, the recreation she is entitled to, then the home is left in disorder and the misery is doubled."

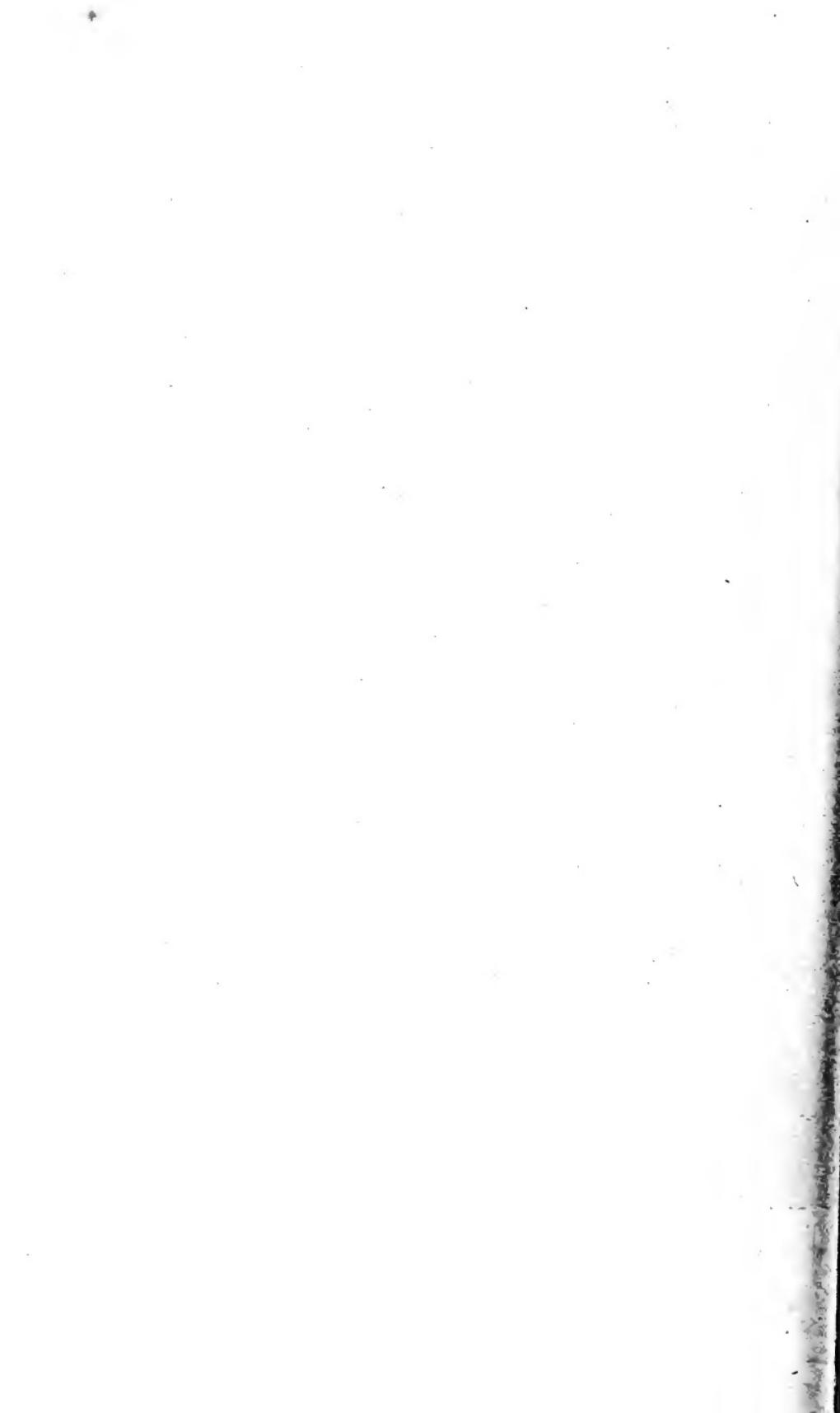
Although Bebel's description applied to tenement-house life in Germany, practically the same conditions exist in most American cities, and especially so in New York. To their evil effects may be traced the increasing extent of desertion, bigamy, intemperance and other causes which destroy married life and provide cases for the Domestic Relations Court.

Another phase of the marriage question which impresses an observer in this court of the poor is the serious problem of the offspring of the unfit. To anyone interested in the eugenics movement nothing could be more sad than those frequent instances in which some unhealthy, unfit man, scarcely able to provide food and shelter for himself, has married and become a parent. Out of work half the time, and constantly dragged into court on the charge of non-support, the question may well be asked, "What is to become of the children?" In such cases one is reminded of what H. G. Wells has written on this subject. "Under the really very horrible morality of to-day," he says, "the spectacle of a petty, undersized,



H. G. WELLS

Some interesting forecasts of the marriage and divorce systems of the future have been presented in the works of this notable English author



diseased little man, quite incapable of earning a decent living even for himself, married to some underfed, ignorant, ill-shaped, plain and diseased little woman, guilty of the lives of various ugly, ailing children, is regarded as an edifying spectacle, and the two parents consider their reproductive excesses as giving them a distinct claim upon less fecund and more prosperous people. They are considered to be objects of charity."

A horrible phase of the overproduction of children among the poor was revealed recently by the investigations of child labor in New York State. It was discovered that, in many instances, children employed in the canning factories were driven with blows and threats to work beyond their feeble strength, and that similar conditions existed in the small family sweat shops of the tenements, where hunger made the parents desperate. Thousands of children, it was asserted, died every year, worked to death, beaten, driven, starved; killed by lack of sleep and sunshine.

To make profits for the canning factories, the investigators discovered, entire families worked from dawn until dark, many of them working in sheds by the aid of artificial light. From four years of age upwards children were put to work. One pathetic story related by the investigating committee concerned a little girl not more than five years old, who was working in a sweat shop tearing apart the petals of artificial flowers. When asked how long she had been doing such work she answered, "Ever since I was." Fathers and mothers, it was discovered, were so brutalized by poverty, so hounded and driven by want, that they forced their own children to labor beyond endurance.

In addition to child labor, the abandonment of children is a serious problem in New York, and it was this fact which led to the enactment of a law in 1903 making desertion of wife or family a felony. Yet in spite of the existence of this law desertions have increased to such an extent that New York City is obliged to spend over \$400,000 every year for the relief of deserted wives and families. In combating this evil the National Conference of Jewish Charities has taken a foremost part, and through its Desertion Bureau has traced and arrested large numbers of husbands, compelling them to resume the responsibilities from which they had tried to escape. As the result of its investigations, the Bureau has discovered that among the chief causes of desertion are incompatibility of temperament, an illicit relation with another woman, and lack of employment. Next in importance are general bad habits, the man's illness or laziness, and the interference of relatives. Minor causes are the woman's immorality, mercenary marriages, disparity in ages, and religious differences.

The officials of the Domestic Relations Court, who have had an extensive experience in dealing with the troubles of the unhappily married, consider that among the poor the principal causes of disagreement are: drinking on the part of the husband, and idleness, ill-temper and extravagance on the part of the wife. Trouble is also frequently caused by the interference of relatives. Still more important is the vital fact that the average weekly wage of the men arraigned in court is between ten and fifteen dollars a week, which, in these days of costly living, does not go far towards the support of a wife and family.

Consequently, those who are interested in these problems of the poor are convinced that marriage, as at present constituted, is far too easily entered into. Hasty and early marriages, in fact, cause half the domestic troubles of the poor.

The question of nationality, strangely enough, enters comparatively little into the causes of unhappy marriages, except in the case of Italians who marry girls of other nationalities. In such instances, a great difficulty often arises from the fact that the man is likely to have standards of living quite different from those of his wife. She will probably not even like the sort of food to which he is devoted, and there is no basis of companionship on which they can get along. The girl has perhaps been fascinated by a handsome man, and then she marries him to find that life with him means desperate poverty met in the Italian way by overcrowding in a few small rooms and living on macaroni.

Although husbands are supposed usually to be the offenders, the magistrates have found that a great deal of marital trouble is due to the irritating behavior of wives. Many girls among the poorer classes marry to better their condition, and on discovering that their husbands are not earning as much as they supposed they become dissatisfied. Nagging women are much in evidence in the Domestic Relations Court, and every day proof is furnished of the fact that the average man, to avoid nagging, will undergo almost anything. Another thing seldom taken into account, especially by young wives, is the fact that men from time immemorial have put on their best manners for courting. The young wife seems

to forget that she too has resorted to the same tactics. After marriage there is often a harsh awakening. More than the ballot or any other right, the young wife needs to learn that in a large measure it depends upon her to make or mar the nest which was built for two.

Generally speaking, the fact that modern conditions have brought the Court of Domestic Relations into existence and are making its work increasingly hard, furnishes striking evidence of the social changes that are taking place. All investigation tends to show that the effects of economic progress constitute the great underlying cause of domestic troubles among the poor. In the lower strata of society as in the higher, the same forces are steadily making it more difficult to maintain a home and family life based upon the ideas of a former age. Even among the poorest the observer is impressed by the growing spirit of unrest and the dissatisfaction with existing matrimonial conditions. Of the various contributing causes which may be mentioned are the strain of modern life resulting from changing economic conditions, the demand for a greater degree of individual freedom, and new standards of living. It is also evident that the progress of education and the advent of new ideals of marriage and its obligations are destined ultimately to effect some wholesome reforms in the married life of the poor. But until this stage in social development is reached there is unlikely to be any decrease of those domestic troubles which come before the Court of Domestic Relations.

Under present conditions such courts as this are performing a most useful work in straightening out domestic tangles among the poor. As divorce—the only adequate

remedy in many cases—is unobtainable under the existing New York law, the court, by smoothing over the rough places which flourish under that law, is, to some extent, providing an antidote for its evil effects. Its work, nevertheless, is only palliative and not remedial. Perhaps the best solution of the marriage problem in New York would be to have both a Domestic Relations Court and a reformed divorce law, making divorce, in certain cases, dependent upon previous experiences in this court. Such a plan would, at least, do away with the objections to easier divorce as far as the uneducated masses are concerned.

IX

EASY DIVORCE

**A STUDY OF THE NEVADA DIVORCE LAW AND THE DIVORCE
COLONY AT RENO**

THE facts presented in the two preceding chapters have plainly shown that the stringent divorce law of New York is not only far from ideal, but has given rise to extremely unwholesome conditions. And the same may be said of practically all laws of a similar character. We are now to examine, in striking contrast, the divorce law of the State of Nevada, which, representing the other extreme of divorce legislation, has served to attract world-wide attention. The ease with which divorce can be obtained in Nevada has caused the migration of a host of divorce-seekers to the town of Reno, which has attained, to-day, the position formerly held by Sioux Falls, South Dakota, as a national divorce centre.

For the purpose of gaining an insight into the operation of the Nevada law, the author spent some time in Reno and made a careful study of its divorce colony. The information thus obtained not only serves to show what class of men and women are seeking easy divorce, but reveals the causes which compel the majority to travel far from home in order to be freed from marriage ties.

Never in the history of the world has there been



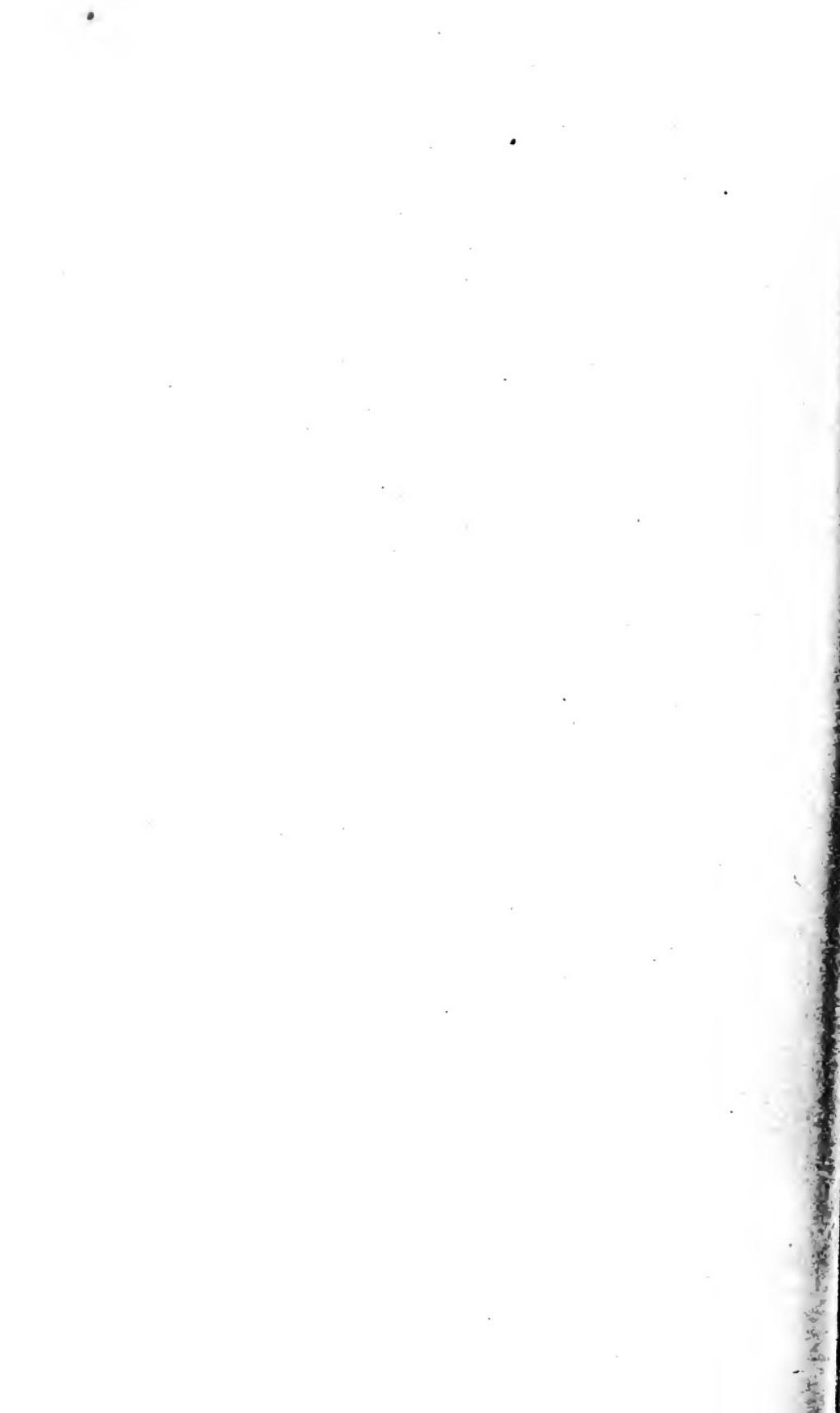
COURT HOUSE AT RENO

The goal of those who flock to Nevada to be freed from marriage ties



THE RENO DIVORCE COLONY

A view of Reno, showing the Truckee bridge and Riverside Hotel. In this district the divorce colonists mostly reside



such a divorce colony as that which exists to-day in Reno; no divorce centre has ever attained such a world-wide reputation; the very name of the town, in fact, has become indelibly linked with the evolution of American easy divorce. Even Sioux City, in its palmiest days, attracted but a few score of divorce-seekers at a single period, while Reno annually counts its colonists by hundreds. They come from all parts of the United States, and some even from foreign lands.

As the Mecca of our divorce-seekers, Reno owes its rise to the fact that the Nevada divorce law is not only remarkably liberal in its provisions, but newcomers can establish legal residence and commence divorce proceedings after the brief period of six months. The law, furthermore, permits a defendant who is not in Nevada to be served with a summons sent by mail or by the publication of a notice in a newspaper. This latter provision is unique among the divorce laws of the United States. It is for that reason divorce-seekers flock to Nevada from all parts of the country.

Considering the enormous migration of divorce-seekers to Nevada, it is not surprising that a widespread impression should prevail that the divorce law of this State is comparatively new, and that it was designed to promote divorce for business reasons. The fact is that the law was enacted in 1861, at a time when divorce was comparatively uncommon.

On the organization of Nevada as a territory, in that year, the Congress of the United States gave approval to the present divorce law which was included in the Nevada statutes. It reads as follows:

DIVORCE FROM THE BONDS OF MATRIMONY

Divorce from the bonds of matrimony may be obtained by complaint under oath to the district court of the county in which the cause thereof shall have accrued or in which the defendant shall reside or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties have last cohabited *or in which the plaintiff shall have resided six months before suit be brought*, for the following causes:

Then follows a statement of causes, adding to the usual ground of adultery, desertion for one year, conviction of a felony or infamous crime, habitual drunkenness, extreme cruelty and non-support for one year. According to this law, a plaintiff, even if he or she is a citizen of another State, can bring an action for divorce after having lived for six months within the boundaries of Nevada. If the term of residence were increased to one year, Nevada, in the matter of causes, would be in much the same position as California, Washington and other Western States. The Nevada grounds for divorce are, in fact, less in number than those of several older States,—New Hampshire or Tennessee, for instance. South Dakota, as already observed, was once in Nevada's position; but the people of that State, when the question was referred to them, voted to increase the legal term of residence from six months to one year. Oklahoma's liberal divorce law presents some hopes to aspirants for freedom; but Oklahoma's law has never been tested, while Nevada's law has not only been in force for half a century but has received Federal approval.

Much criticism of the Nevada divorce law has been

directed at the ease with which it enables citizenship to be acquired. It is, of course, a fact that divorce-seekers who go to Nevada from other States almost invariably become "citizens" for the sole purpose of getting divorced, and then when that object is achieved they return to the places whence they came. Owing to this fact, and the unfortunate conflict of State laws, the New York courts have declared some Reno decrees to be void because the defendants—residents of New York—were not served with papers in Nevada. Judge Whitney, in a recent decision, asserted that the Nevada courts had no jurisdiction whatever when the defendant's domicile was in New York and he resided there. Consequently, a wife could not go to Reno for divorce and serve papers on her husband in New York by mail or otherwise. "Matrimonial domicile," said the judge, "may be defined as the place where the parties [to the divorce action] have lived, the husband and wife making that place their fixed home."

Undoubtedly the courts of Nevada have been often imposed upon by unscrupulous litigants, who have taken advantage of the rule permitting service by mail or publication when the defendant resides in another State. Under this rule, a plaintiff who is willing to commit perjury can easily evade the law. A husband, for instance, might desert his wife in New York, go to Reno for divorce and give some address at which his wife had never lived. The papers would be sent to that address by registered mail, and would be returned eventually with the information that the addressee could not be found. Then service would be made by publication, and to comply with this requirement an advertisement might be inserted

in some obscure paper of limited circulation. Even if inserted in an ordinary daily newspaper it might escape attention. A wife could therefore remain in complete ignorance of the fact that her husband was obtaining a divorce, and this would be granted through her failure to answer. It was largely on this account that the New York courts declined to recognize certain Nevada decrees.

Critics of the Nevada law further assert that its laxity also lies in the interpretation of one or two of the grounds of divorce, especially that of "cruelty." Actions brought on these grounds by most plaintiffs from other States are said to be usually trivial and absurd. It has been asserted, for instance, that according to the Nevada definition of "cruelty" a man who smokes a brand of tobacco displeasing to his wife, or who follows some hobby that she loathes, could be accused of cruelty and divorced. Even the Nevada courts, however, could hardly stretch the law to that extent. Such exaggerations as these are constantly indulged in by writers whose knowledge of the facts is superficial.

The truth is that the decisions of the Nevada Supreme Court, in important divorce cases, have been based very largely on the decisions of the courts of older States and even those of the English courts. As an example of this, the case of Kelly vs. Kelly may be mentioned. In this case, which came before the Nevada Supreme Court in 1883, a husband sought a divorce from his wife for cruelty, her persistent abuse and nagging having driven him from home. The court decided that the element of danger to life and limb or health, or the reasonable apprehension of such danger, must exist in order to consti-

tute legal cruelty, but there might be cruelty without personal violence, and such cruelty working upon the mind might affect the health. In deciding this case for the plaintiff, the court quoted the opinion of the English judge, Lord Stowell, in the case of Evans vs. Evans, in which he said: "What cruelly wounds the mental feelings is, in a few cases, to be admitted when not accompanied with bodily injury either actual or menaced."

In another important Nevada case, Gardner vs. Gardner, the plaintiff charged her husband with having threatened to kill her and falsely accused her of improper conduct with other men. This accusation, repeated almost daily for six weeks in conjunction with the husband's frequent drunkenness and habit of gambling, caused the wife great bodily pain and mental anguish which seriously affected her health and rendered her life so unendurable that she was forced to cease living with the defendant. This the court held was sufficient to constitute a cause of action for absolute divorce on the ground of extreme cruelty.

From this it will be seen that the Nevada decisions are not based on any recent Wild Western ideas, but have the approval of well-established precedents, going back even to those of the English courts. Nor is the modern definition of "cruelty" confined to the Nevada decisions, for in a New Hampshire case (Robinson vs. Robinson, 66 N. H., 600) the Supreme Court of that State approved of a divorce being granted to a plaintiff whose grievance was that the practice of Christian Science by his wife had seriously injured his health and endangered his reason!

By the critics of Nevada divorce it is asserted—and it is undoubtedly true—that there is a large amount of collusion in the Reno cases. In many actions brought by women the husbands have apparently done all in their power to assist the proceedings. Some of them have entered appearances, making simply a mild denial of the charges; others have ignored service altogether; and all of them have waited patiently at home for the news which has set them free. Very few cases are ever opposed, and not one of those on the docket at the time of this investigation afforded any sign of a contest.

As to the causes which take such a host of divorce-seekers to Nevada, they are just as varied as those for which decrees are granted in other States, excepting that New York's sole cause—infidelity—figures comparatively little in Reno cases. Furthermore, in many instances the grounds on which divorces are sought would be considered entirely inadequate in most of the Eastern States. The usual charges are non-support, cruelty and desertion, the cruelty being almost always of the mental type already referred to. This includes nagging, the use of insulting language and any behavior tending to make life intolerable to husband or wife. In the cases of men and women from New York almost every grievance excepting infidelity is made a cause of action. In several recent cases the men who obtained divorces had been obliged, for business reasons, to live in the West and had been deserted by their wives who preferred to remain in the East. Under the New York law, of course, these men would have had no adequate redress.

Reno's advent as a divorce centre is a matter of recent

history. It was in 1900 that Earl Russell, one of the English peers, caused a sensation by obtaining a Nevada decree and marrying Miss Marion Cook, with whom he returned to England, where his first wife was then living. The newspapers, at the time, printed columns about the case, and most of the articles called attention to the ease with which divorce could be obtained in Nevada. Soon after his return to England, Earl Russell was arrested for bigamy and was tried before the House of Lords. His Nevada decree was declared to be invalid, and being convicted, the earl was sentenced to three months' imprisonment as a first-class offender. His wife died shortly afterwards, and he again married Miss Cook in England.

As the result of his experiences, the earl has written a book on divorce in which he advocates strongly a revision of the present English divorce law. Like most reformers, he condemns judicial separations, which he denounces as survivals of a tradition having no warrant either of common sense or of Scripture, and further because being contrary to nature its retention must do harm to morals and social order. He also takes a decided stand in viewing marriage as a purely civil contract.

In spite of the notoriety attained by Nevada in consequence of the Russell case, it was not directly to this case that Reno owed its rise as a divorce centre. The Russell case, it is true, paved the way to Reno's fame, but its divorce colony was actually started by an enterprising New York lawyer. His attention was called to the liberal features of the Nevada divorce law through reading about the Russell case, and finding that South Dakota was then losing its prestige as a divorce centre, he started

off to Reno immediately and opened an office there. Through an agent in New York he circulated a pamphlet calling attention to the facilities for divorce in Nevada and the pleasures of life in Reno. He also advertised in the newspapers. As his business began to grow, two other attorneys came from New York and imitated his methods, while the Reno lawyers themselves likewise began to compete for the increasing divorce business. As the result of clever advertising, divorce-seekers from all parts of the United States flocked to Reno.

The founder of the Reno colony and his confrères from New York were not content with obtaining a liberal share of divorce litigation, but in their anxiety to control it they resorted to various illegalities for the benefit of their clients. Perjury was often committed as to the term of residence, the service of papers or grounds of action. Two of these men were eventually disbarred and fled from the state after being indicted for perjury. Since then the local bar association has prevented a repetition of illegal practices in divorce proceedings.

As to the extent of the divorce colony, opinions differ considerably, but those who have the best means of knowing assert that there were living in the town in 1913 about five hundred persons seeking freedom from matrimonial bondage. As Reno has been advertised extensively since then, it is quite possible that over five hundred divorce-seekers may be there at the present time. Though they come from all parts of the country—women being in the majority—a large proportion of them claim to be New Yorkers. A few Canadians and English people also go to Reno to escape from the rigorous laws of their own

countries, and some people of other nationalities travel from more distant parts of the world. For all these colonists Reno provides accommodations of every description, the cost of living being far less than in Chicago or New York. Some go to hotels and boarding houses or take furnished rooms and do light housekeeping, while others lease houses or flats.

With a population of over twelve thousand, Reno is one of the most attractive little cities in the West. Magnificently situated among the foothills of the Sierra Nevadas, it is substantially built—a town of red brick so far as its business district is concerned—the principal streets are asphalted, the sidewalks well paved, and the whole place looks unusually well kept. The residential districts, in which pretty detached houses of modern type are set amidst velvety green lawns and shady trees, compare favorably with those of much larger cities.

Reno, moreover, has good stores and theatres, a miniature public library, and in the adjacent country excellent automobile roads make motoring a delight. There is still another source of recreation for visitors. Through the centre of the town flows the Truckee River, one of the finest trout streams in the country. Added to all this, Reno has a superb climate, both in summer and winter. Its altitude and proximity to the mountains prevent any great extremes of heat in summer, and although the winters are cold, the air is clear and bright, with plenty of sunshine.

The Nevada law requires a continuous residence of six months in a county of the State before a divorce can be obtained; consequently when an action is brought in

Reno six months' actual residence in Washoe County must be proved. In cases where it is of vital importance for a litigant to leave the State for a reasonable period, permission may be obtained from the courts, although this is seldom granted. Some of the richer divorce-seekers probably take occasional trips to San Francisco, three hundred miles distant, but this must be done secretly to escape legal difficulties.

Most of the colonists endeavor to live as quietly as possible, at least publicly, during their term of residence, but there are, of course, exceptions. Some women having plenty of money to spend and no characters to lose are accustomed to lead a wild, Bohemian sort of life, and their behavior often scandalizes even the divorce colony. Such women, however, are decidedly in the minority. Of this type of loud, reckless young women some are "grass widows," whose decrees are in the past tense, others are ex-chorus girls, or fourth-rate actresses and adventuresses. Reno being a comparatively small place, women of this class are, of course, more noticeable than they would be in a large city, whereas the quiet lives of the respectable colonists are not quite so interesting.

The accounts of divorce dinners, balls and other sensational entertainments in which such women take a leading part, are frequently appearing in the newspapers because they make what editors call "good stories." On this account, a stranger who makes only a brief stay in Reno is apt to get an entirely wrong impression of the colony. The casual visitor observes only those women who are anxious to be seen and heard and are glad to be pointed out as divorce-seekers.

Much is heard of the men and women who obtain Nevada decrees in order to remarry. While in many instances this is probably the real object of divorce, still it is far from being the general purpose. Oftentimes the divorce-seekers are middle aged or even elderly and their sole object in going to Reno is to be freed from marriage present and prospective. Many of the younger women do not go to Reno alone, but out of regard for propriety are accompanied by their mothers or other elderly relatives who act as chaperones. Others take their children with them and superintend their education. It is largely owing to the presence of these visitors that Reno possesses an interesting social organization, the Twentieth Century Club, which welcomes to its membership women of a good class who join the divorce colony. These add much to the social life of the place, for the colony has included people who have been prominent in society, in music, the drama and the fine arts.

Many of the younger women, during their term of residence, take up courses of study, and a large proportion of the women to be seen exchanging books at the library are members of the colony. Women of this class are to be found in the congregations of most of the churches, and some who have ample means have done a great deal of good in the town by engaging in works of charity. That divorce should be such a conspicuous feature of life in Reno is, after all, not surprising, for the advent of several hundred strangers, a large proportion of whom are women with plenty of money to spend, would naturally make a stir in an isolated Western town of twelve thousand people.

As a rule the divorce-seekers find Reno an agreeable place of residence, and men who have no ties to draw them elsewhere have been known to settle down in the town after obtaining their decrees or go into the country to embark in farming or mining. Some of the wealthier divorced people have bought ranches in the vicinity of Reno, married again and are leading happy, contented lives.

Most of the men who join the colony find work or if they have money enough they go into business of some kind just to pass away the time. The average American who is intelligent and healthy cannot loaf contentedly; he has to turn to work for his recreation. The fact, too, that a man has worked while passing his six months in Reno goes far towards making a favorable impression on the court and the obtaining of his decree.

Many men from the East who seek divorce belong to the humbler classes, and have just managed to scrape enough money together to get to Nevada. They are glad to turn their hands to work of any kind. Some who would have scorned to do manual labor at home soon find themselves roughing it in true Western fashion. For instance, a bookkeeper from Brooklyn found employment as porter in one of the hotels, and the driver of a delivery wagon had once been a floorwalker in a New York department store. Men of this type seem perfectly satisfied to undergo the severest hardships in order to gain their freedom.

The women who work their way to divorce at Reno are even more numerous than the men, and their employment is just as varied. They are to be found behind

the counters in the stores, they tap typewriters, they keep books, they teach music, singing, painting, dancing; they cook, act as nurses and waitresses, and even scrub floors with the sole object of obtaining release from the marriage bond.

A large proportion of the divorce-seekers, however, are women who go to Reno supplied with sufficient funds to enable them to live in comfort until their decrees are obtained. In such cases it is often a matter of collusion. The husbands and wives have agreed to separate, and while the wife in Reno is eagerly awaiting the day when her decree will be granted, her husband at home is probably looking forward to his freedom just as impatiently. The wife can make any charge against her husband that she pleases; he will enter an appearance but make no defence, and the case will go by default.

As to the cost of a Nevada divorce, the poor litigant can obtain a decree for fifty dollars, or even less, as the average lawyer usually makes his charges according to the social position of his client. But those divorce-seekers who are well-to-do usually pay in proportion to their means. It has been estimated that a person well supplied with money generally pays from fifteen hundred dollars upwards, this amount being based on the assumption that the divorce-seeker is a resident of New York or some other Eastern city and has to travel to Nevada. The amount mentioned is supposed to cover traveling expenses, living expenses for six months and the costs of the action.

The remarriages which so often follow Nevada divorces have undoubtedly given rise to much scandal, al-

though it is only fair to remark that in such matters the divorce law of Nevada is not altogether to blame, for there have been plenty of cases even in New York where similar scandals have arisen. In order to put a check on such marriages, the Reno judges are now in the habit of asking plaintiffs in divorce cases whether they intend to remarry. The answer is invariably an emphatic "No," regardless of what the ultimate result may be. As most of the plaintiffs are women, those who marry soon after obtaining their decrees probably consider themselves entitled to a woman's prerogative of changing her mind.

The amazing conflict of State laws, already referred to, has brought about some strange situations in connection with Nevada divorce. In at least two cases men from other States, who had obtained decrees and remarried, returned to their home towns, whereupon their former wives brought successful actions for divorce in their home States, asserting that the second marriages were bigamous, accusing the defendants of infidelity, naming their second wives as co-respondents and demanding alimony.

In the courts at Reno, of course, an applicant for divorce, having acquired citizenship in Nevada, is granted a decree, if entitled to one, regardless of what the laws elsewhere may be. There are two judges who try divorce cases during the regular terms of court, two or three days of every week being devoted to such cases. The total number of actions filed in recent years, when the divorce colony was notably large, were as follows: 1910, 492 cases; 1911, 546 cases; 1912, 588 cases; 1913, 590 cases.

The Reno courthouse, it may be added, is a beautiful new structure of white stone and marble, a spotless temple of justice, although not exactly emblematical of the Reno of popular fiction. In spite of this fact, however, a yellow journalist, who visited the town a few years ago, described the divorce court as being held in a sort of public hall, in which an obliging judge sat at a desk and handed decrees to all comers.

As to the class of divorce suits tried in Reno a good idea of them can be obtained from the following summaries of a few cases which were heard in the courts during the period of the author's investigation:

DESERTION.—The plaintiff, an intelligent woman under forty, had been left a widow while living in California, and in order to support her two little girls, had found employment as a school teacher. While thus engaged she had married again, her second husband being a mining man. The marriage, however, was not a success. In less than a year the husband left home, and went to a mining camp, where he insisted on the plaintiff's joining him, threatening to desert her if she refused. As she was anxious to educate her children, and it was a wild place in the mountains, full of rough men with hardly a decent woman in it, she declined to go. The husband then ceased all communication with her and finally went to Montana. The plaintiff had not heard from him for over a year. After a careful cross-examination by the judge and proof of the plaintiff's residence in Reno, a decree was granted.

INFIDELITY AND DESERTION.—The plaintiff, a middle-aged man, a mechanic, came from Canada. He had been

working at his trade in Reno and intended to stop there. During his married life in Montreal, his wife took boarders and was guilty of improper behaviour with one of them. When the plaintiff ordered the man to leave the house, the wife said she would go too. She went off, and he had not heard from her since then. As he could not afford to get a divorce in Canada he decided to settle in Nevada. His residence having been proved, the decree was granted.

CRUELTY AND DESERTION.—A case from New York. The plaintiff, a woman of evident refinement, had obtained permission to have a private hearing on account of the testimony's being of a particularly unpleasant nature. She was awarded a decree.

It is to the credit of Nevada that divorce cases in which indecent testimony has to be given can be heard privately at the discretion of the court. Certainly, no good purpose is served by allowing the public to hear such evidence and subjecting the plaintiff to the ordeal of giving oftentimes revolting testimony before a crowd of curiosity-seekers.

GROSS AND REPEATED CRUELTY.—Also from New York. The plaintiff was a woman of forty, well educated, of prepossessing appearance, but with a sad face. Her husband had insulted her for years, frequently striking and bruising her. He had also driven her from the house on several occasions. Sometimes he had compelled her to eat her meals in another room, saying that he could not bear the sight of her. Once when he was intoxicated the plaintiff locked herself in her room, whereupon he burst in the door, seized her by the throat and struck her sev-

eral times. She was obliged to leave him at last, believing that her life was in danger. Satisfactory evidence of service of papers and residence having been presented, a decree was granted.

CRUELTY AND THREATS OF MURDER.—A case from South Carolina, where there is no divorce law. The plaintiff, a tall, melancholy, sallow-faced man of middle age, had evidently been mismated, his wife and he having quarrelled for years. He was a mechanic, and on coming home from work he would seldom find his wife in or supper ready. She was usually away visiting. When he complained, she would abuse, insult and assault him. On one occasion he was badly cut by a knife that she threw at him, and in support of this statement he showed a scar. His wife had made murderous threats and her two brothers had declared they would kill him. He was working in Reno, and nothing, he said, could induce him to return to South Carolina. Proof of residence having been submitted, a decree was granted.

CRUELTY AND DESERTION.—A handsome, blonde young woman who came from New York, had been in the theatrical profession and was married to a New York man. He had means, belonged to several clubs and moved in good society. They had quarrelled from the very beginning of their brief married life, and the husband had constantly drunk to excess. At such times he would abuse the plaintiff, strike her and subject her to repeated humiliations, "rendering life intolerable." He had recently excited her jealousy by paying marked attentions to a chorus girl. While this might possibly have been a case of collusion, still there was nothing to prove it, so

the plaintiff was eventually given the benefit of the doubt and was awarded a decree.

It must not be supposed that the judges in Reno listen to plaintiffs' statements and grant decrees without the slightest attempt at investigation. In each of the cases, thus briefly summarized, the judge subjected the plaintiff to a severe cross-examination, and had there been any flaw in the evidence there is every reason to believe that a decree would have been refused. Proof of residence was submitted in every case, and with the exception of two instances in which the defendants could not be found, the service of papers was also proved.

To any impartial observer it is evident that the Nevada judges endeavor conscientiously to administer the law of the State, and whenever there is anything suspicious in a case they take steps to protect the interests of the defendant. In some instances where men from other States have sued for divorce, they have been ordered to pay their wives' travelling expenses to Reno and to give them liberal amounts for counsel fees, in order that a proper defence might be made. In one action, brought by a New York man, the wife wrote to Nevada protesting against the divorce suit. The plaintiff was ordered, at once, to pay a certain amount to his wife for her expenses and defence, whereupon he declared that he could not afford it and stopped his suit.

It has already been pointed out that a majority of Reno actions are brought by plaintiffs from New York. In most of these New York cases an observer is impressed by the fact that men and women who are justly entitled to divorce could obtain no relief in their own State. In

a recent case of this kind, a man well known in New York society obtained a decree on the ground of desertion. From the evidence it appeared that after a stormy married life of thirteen years his wife's conduct had rendered his existence intolerable. A separation eventually took place, three children involved in the case remaining with their mother.

Reputable witnesses testified to the exemplary conduct of the plaintiff in this action, declaring him to be a temperate man, a kind husband and loving father, and that the violent temper and general behavior of his wife was so well known that friends had declined to visit his house. In describing the disgraceful scenes that occurred prior to separation, the plaintiff testified that his wife had called him a drunken liar, had ordered him out of the house and threatened to throw his belongings into the street.

An absolute decree was granted in another New York case in which the plaintiff was a woman of some social prominence. Her charge was non-support, her husband having failed to provide for her during her four years of married life. According to the plaintiff's story, it appeared that her husband, immediately after marriage, had taken her to the home of his parents where she was very uncomfortable. He had refused to give her any allowance and had even permitted her to buy the wedding ring. His excuse had been that he had only a small income and needed all of it for himself. After he had neglected her for over a year she decided to settle in Nevada and obtain a divorce. The husband admitted service of summons and complaint and in his answer

acknowledged the truth of his wife's statements. In such a case as this the New York remedy of a judicial separation would have been wholly inadequate.

An extraordinary phase of the divorce question was revealed by a case recently tried in Reno, in which the plaintiff, a dramatic reader, playwright and Socialist, obtained a decree permanently separating her from her husband, a Socialist writer and lecturer. The divorce was secured in order that the husband might marry a friend of the plaintiff's, who had won his affections. Shortly after the wife obtained the decree in Nevada, the husband's second marriage took place in an Eastern city. The plaintiff, strange as it may seem, expressed the strongest affection for the friend who had supplanted her in her husband's affections, and also declared that her esteem for her husband had not suffered as the result of the divorce; that she regarded him as her best friend, and that the intellectual friendship, which had been the keenest joy of their married life, would continue.

In explaining her views, the ex-wife remarked: "I cannot conceive of a woman fighting to keep a husband when she realizes that his love belongs to another, or of her trying to win back a love when it has departed. I have far too great a respect and reverence for love and for the feelings of others to do such a thing. My husband and his present wife regard me in the light of an older sister. People, therefore, need not be in the least surprised if we are ever seen in public together. We all esteem and respect each other, and I am sincerely glad they have found happiness."

Much is heard of the frivolous character of Reno di-

vorce cases, their supposed unimportant grounds and the unsatisfactory evidence that supports them, but the serious side of this divorce litigation is seldom mentioned. Of this feature of the divorce question those who have listened to testimony in the courts from month to month are thoroughly competent to speak. The judges who have heard these cases could probably tell of women who, for the sake of their children, or on account of family ties, or even religious scruples, have declined to seek relief in divorce for years, or until patience became no longer a virtue. If those who hear the evidence, taken behind closed doors, could violate their oaths of secrecy, they might astonish the world with their stories of horrors and outrages perpetrated under the guise of matrimony.

What greatly impresses most observers at Reno is the fact that comparatively few natives of Nevada figure in divorce proceedings. It must be remembered, however, that the divorce-seekers who form the divorce colony are drawn from all the other States, with a population numbering nearly a hundred millions, whereas the total population of Nevada is under a hundred thousand. Furthermore, in a country so scantily populated, and having comparatively few diversions, there is nothing like that degree of the strenuous life which leads to divorce in our larger cities.

It has been noticed that many of the Reno colonists come from California and other Western States, where divorce is comparatively easy to obtain, and the grounds for divorce are not much different from those mentioned in the Nevada statute. There are several reasons for this. As already explained, Nevada is somewhat lax in

regard to the serving of papers on the defendant, who may also reside in another State, while the laws of most other States are not only more strict in regard to service, but require that plaintiff and defendant must both reside in the State where suit is brought. And, again, while a Nevada decree of divorce takes effect almost immediately, in other States a decree may be an interlocutory one, in which case remarriage is usually illegal until a year has elapsed. The greater liberality or laxity of the Nevada law, and the fact that many people do not wish to obtain divorces in places where they are known, probably explains why so many Western divorce-seekers migrate to Nevada.

Having to dispose of such a large number of divorce cases, the judges at Reno are exceptionally well qualified to express some practical opinions on the granting of divorce. They believe that the Nevada law is not only far from imperfect, but that it is infinitely better than the law of New York which is, in fact, largely responsible for the existence of the Reno divorce colony. The same feeling, it may be added, exists in all other Western States which have liberal divorce laws.

The judges of Nevada are inclined to favor the adoption of a uniform marriage and divorce law; but they realize that it would be difficult to enact a national law of this kind. It has been suggested that a model law might be drawn up by a national convention composed of judges, sociologists and others appointed by each State, and this could be submitted to each State Legislature for approval. The general feeling among the Nevada judges seems to be that the Congress on Uniform

Divorce, which met in Washington in 1906, was not sufficiently official in character to render its work effective. Another body which, it is thought, might deal with this subject is the Governors' Conference, which makes it possible for the chief executives of the States to discuss such matters calmly and wisely. In some way of this kind, it is hoped the present conflict of State laws will eventually be brought to an end.

Among the members of the Nevada bar the opinion is generally expressed that no change whatever should be made in the present State divorce law, and that in many respects it is far superior to the restrictive laws of certain other States. In a recent paper on the divorce question, the Hon. Oscar J. Smith, of the Reno bar, makes the following comparisons between the New York and Nevada laws:

"In New York," he says, "a man may desert his wife for years, or be a persistent and horrible drunkard, or a felon—perhaps imprisoned for life—or he may wilfully neglect to support her and her children, or may beat, kick and choke her, heaping upon her every cruelty and indignity that his depraved mind may suggest, and yet her remedy for any or for all of these wrongs is only a divorce from bed and board. This leaves her still his wife in name and in law, and therefore incapable of contracting another marriage, even if the poor, unfortunate woman should happen to find some good man who is willing to marry her and is able to take care of her. Is such a remedy adequate? Of course not. It is an inheritance from the barbarism of past ages when the church controlled domestic relations and men treated their wives as

chattels. No fair-minded man with common sense will attempt to assert that such a remedy is adequate.

"He that is without sin among you, let him first cast a stone." Will New York, or any other State, throw stones at Nevada if its own citizens are not sufficiently sinless to make the stoning accord with Scripture?"

Mr. Smith severely criticises the Model Divorce Law of 1906, particularly the provision requiring two years' residence in a State as a prerequisite to bringing a divorce suit; also a suggested clause which would prevent an absolute divorce being granted for insanity of the wife arising after marriage, "an iniquity exposed as long ago as 1847 in Charlotte Bronté's '*Jane Eyre*.' "

The best public opinion in Nevada seems to be opposed to the influx of migratory divorce-seekers, principally because the business interests of the State have been injured by the publicity given to the colony at Reno. There is little criticism, however, of the divorce law itself, and if it is ever amended, the change will not be influenced by any moral considerations, but will be made solely for the purpose of ending or limiting the divorce colony.

In closing this review of the operation of the Nevada law and the conditions existing at Reno, a brief explanation should be added. Impressions of the divorce colonists have appeared, it is true, with quite unnecessary frequency in the more sensational newspapers or magazines. But these, when they were not written by self-confessed yellow journalists in a sensational vein, have been usually the work of people who had no claim to be considered trained observers, and who were therefore led

to deduce from surface appearances an entirely erroneous idea of the deeper truths.

While certain features of the Reno divorce colony have invited unfavorable criticism, it is manifestly unfair to select these as illustrating the evil effects of a liberal divorce law. To anyone who has given the subject impartial consideration, it must be evident that even under existing conditions the granting of divorce in Nevada is attended with far more decency than has been apparent in a great number of cases tried in the courts of New York. The whole procedure of the Nevada courts, and the grounds on which divorce is granted, are infinitely more in harmony with the enlightenment of the present age than are the conditions resulting from the restrictive New York law, involving, as they so often do, such immoralities as collusive adultery and perjury, with the consequent employment of divorce lawyers and detectives, which gives rise to various extortions and frequent blackmail.

As a well-known novelist has remarked, to sweep all the dust into one corner of a room may give the visitor who sees only that corner a very ill founded impression regarding the cleanliness of the rest of the apartment. But, as a matter of fact, this is precisely what has happened at Reno. The undesirable elements of the divorce colony—the Bohemians, the chorus girls and the non-moral plutocratic set—being socially objectionable, are compelled to rely upon each others' society during their term of residence. The obvious result is that they congregate in resorts which have in consequence become notorious, and in which one discovers the only atmosphere at all

resembling the impression held by the outside world as to the life of Reno as a whole. While, however, we may disapprove of the conditions that have made the Reno divorce colony possible, nothing is to be gained by misrepresentation. Reno, in fact, is far from being the place of iniquity that it is popularly supposed to be, and its colonists are not all bent on evading the laws of States in order to violate the rules of morality.

Summing up the divorce situation as it exists in Nevada to-day it may be said that while half the applicants for divorces there would probably be considered by the courts of most other States to be entitled to absolute decrees, the pleas on which the other half seek their freedom would perhaps be regarded as doubtful or unconvincing. Whether it would be better for society if the latter class were compelled to put up with the married life to which they most emphatically object is a question on which public opinion is far from agreeing. As for those who are fully entitled to divorce, it is evident that something is radically wrong with the laws of certain States when such people, in order to obtain relief, are obliged to leave their homes and journey to Nevada. This furnishes one of the strongest arguments in favor of some satisfactory system of divorce that would render such migrations unnecessary.

At the beginning of 1914 the Nevada Legislature amended the provision of the State Divorce Law, which permitted a non-

resident to sue for divorce after living in the State for six months. The term of residence was increased to one year.

According to all accounts, the objects of this amendment were,—to put some check on the number of divorce-seekers who flocked to Nevada from all parts of the country, to curtail the extent of the divorce colony at Reno, and to remove any ground for the widespread impression that Nevada was deriving a large revenue from the granting of divorce.

The change in the law, it is said, was not made on any moral grounds, but chiefly because it was thought that Nevada had been injured in a business way through the existence of the divorce colony. For years past Nevada has been making strenuous efforts to increase its population. Not only are its mineral resources only half developed, but through the completion of an extensive irrigation system vast areas of former desert land have been made fertile. Large numbers of prospective settlers, it was alleged, had read exaggerated stories concerning the divorce colony at Reno, and supposing this to be typical of the social life of the State as a whole, had been led to make their homes elsewhere.

After the law had been changed, however, it was found that the State had derived no benefit from this action, while a majority of the people of Nevada protested vigorously against the amendment. The strongest protests naturally came from Reno. It is said that the divorce colony had supplied an annual revenue of about \$680,000, and the stoppage of this had seriously affected Reno's prosperity.

A State election took place at the end of 1914, and the new legislature was then found to be strongly in favor of repealing the amendment. A few weeks later a bill providing for the restoration of the six months' residence clause passed both houses. The feeling among the women voters—Nevada being one of the women's suffrage States—was divided; but it is a significant fact that of a thousand delegates who visited the State capital to support the pro-divorce movement a large number were representative women.

It may be added that when the law was changed in 1914, making the term of residence one year for divorce-seekers from other States, the *New York Times* pertinently observed that as the people of Nevada had always contended that their divorce law was satisfactory to themselves, and was not designed to attract outsiders the length of the qualifying term was not a State issue. "The validity and propriety of the reasons recognized as being cause for divorce," commented the *Times*, "are not determined by the size of the Reno divorce colony; and if the people of Nevada believe that easy divorce is a good thing for themselves, why should they have sought to impose upon the rest of us restrictions that the permanent residents would never feel? To do that was to dodge the main problem, and was unworthy of Western courage and Western indifference to Eastern opinion."

X

SOME HISTORICAL FACTS

THE PROGRESS OF MARRIAGE AND DIVORCE FROM PRIMITIVE
TIMES TO THE PRESENT DAY

WHILE, at the present time, much is being written about marriage and divorce, the rise and progress of these institutions is seldom analyzed and discussed. Frequent mention is made of the traditional institution of marriage, the traditional home, and various other traditional features of our social life, but the average reader has perhaps only a vague idea of their origin and development.

As far as we can learn, the sexes in primitive times lived in a state of more or less limited promiscuity. Trial and time marriages—proposed by some radical reformers in this age—were then the rule and not the exception. But as civilization advanced, and the family became more settled, marriage became more recognized and it was entered into largely as a lifelong union. Monogamous marriages thus became general, the idea being that one man and one woman should live together for the purpose of establishing a home and having children; and such unions could be dissolved only by the verdict of a chief or council. Thus we have the primitive founda-

tion of the family, and in this sense the terms "marriage" and "family" are most properly used.

Sexual relationships in human as in animal society, it may be observed, have generally followed a natural law, and in the case of man it has been in the direction of monogamy. This is to be partly explained by the fact that the offspring of human beings are unfitted to take care of themselves until a certain period of maturity has been attained, and this would naturally tend to keep the parents together. The woman and the child constituted, it is clear, the first social group. Thus to childhood, helpless and beautiful, we owe marriage and all that growth of morality which has civilized mankind.

"The softened pressure of an uncouth hand, a human gleam in an almost animal eye, an endearment in an inarticulate voice—feeble things enough. Yet in these faint awakenings lay the hope of the human race."

The influence of childhood, it has been said, transformed mere animal attraction into unselfish affection. It substituted family life for animal life. The interests of childhood demand that marriage and its responsibilities should be seriously regarded. As Ellen Key has said, sexual morality encircles the child.

Next to considerations of offspring, the possession of property served to bind the family together and to introduce more permanent conditions of married life. Apart from these considerations, however, it has been remarked by several authorities that union in couples must always be the rule because the numbers of the sexes are always approximately equal while the needs of the emotional life

demand that such unions, based on mutual attraction, should be as far as possible permanent. Nevertheless, there have been certain exceptions to this rule. In some instances, notably among the eastern races, polygamous systems have existed, in which a certain number of wives were regarded as lawful. In a few cases, owing to tribal customs or the scarcity of women, this system has been reversed, and the relations of the sexes have been polyan- drous—each woman having various husbands. One of the last vestiges of this system exists to-day in Thibet.

In primeval times the bulk of the work was done by women as was once the custom among the North Amer- ican Indians. Women did the reaping and cooking, they were the first agriculturists, and they evolved the first household crafts. [In primitive times, however, women held a position of marked inferiority, such as they still hold in uncivilized races.] The usual mode of acquiring a wife was by purchase in some form or by capture in war. Wives had no rights then, and husbands could be guilty of no wrongs to persons who were in the position of their slaves. Even in ancient civilizations, where the status of womanhood was raised considerably, men were allowed privileges which were denied to their wives. In those days, the idea that infidelity on the part of a hus- band was a wrong to the wife, which would entitle her to a legal remedy, would have failed to be understood. This idea survives to some extent at the present day, and it is the distinguishing feature of the divorce laws of certain countries which recognize a lower standard of morality for men than for women.

[In the course of ages, our primitive ancestors prob-

ably evolved some method of putting away their wives and husbands when marriage had proved a failure, more crude, perhaps, than the modern system, but none the less effective. Not until we reach a civilized state of society, however, with marriage recognized as lifelong companionship, does divorce become a remedial measure for the adjustment of the legal and social status of those whose marriage relations had become entangled or broken down.

Over four thousand years ago wise men were trying to solve the divorce problem and were dealing even then with such prosaic matters as alimony, remarriage and interlocutory decrees. All this we have learned from one of the first written divorce laws of which we have any definite knowledge, dating back to 2,250 B.C. It formed part of the code of Hammurabi, King of Babylon, which was discovered at Susa in 1901, engraved on a tablet of stone. This remarkable code enables us to get some idea of the manner in which the lawmakers of Babylon dealt with the divorce question. The code says:

If a man set his face to put away a concubine who has borne him children, or a wife who has presented him with a child, he shall return to that woman her dowry, and shall give her the income of field, garden and goods, and she shall bring up her children . . . and the man of her choice may marry her.

Certain causes for divorce are mentioned, namely, barrenness, foolishness, neglect and disease. Provision is also made for divorced wives who have no children, and for the remarriage of the husband after a short interval. Adultery does not seem to have been a cause for Baby-

lonian divorce, although in the case of the wife it was made a criminal offence punishable by drowning. The husband, however, if he so desired, could condone the offence and thus enable the wife to escape the penalty. The wife could not put away her husband, but she could leave him at her discretion and demand dowry, which was given to her if her record was satisfactory. "But," says the code, "if she hath not been a dutiful housewife, hath gadded about, hath neglected her household, and hath belittled her husband, they shall drown that woman in the water."

Some insight into the operation of the Babylonian law has been given by the Rev. Samuel Mercer of the Western Theological Seminary, who has recently deciphered certain cuneiform inscriptions relating to marriage and divorce. From the records that have been transcribed it appears that divorce suits and scandals were much discussed in ancient Babylon. Having been granted a divorce, a man would pay liberal alimony to his wife, and would then announce that if any one wanted to marry her no objection would be made by him. In one famous case, the plaintiff, Naramtum Samasrabi, denounced her spouse in open court and cried, "You are my husband no longer." Then and there the case was closed, the woman being awarded the alimony she demanded.

Ancient India had its divorce problems and divorce laws. These, however, failed to recognize the rights of women as the laws of Babylon did. Not only was divorce denied to the wife, but she had no redress for any wrongs, while the husband could have the marriage an-

nulled for various reasons, including incompatibility, bad conduct, extravagance and disease.

In patriarchal times in the East, the husband as head of the family could divorce his wife at pleasure. An illustration of such a divorce is furnished by Abraham's dismissal of Hagar. This was surely a simple divorce procedure quite as summary as any permitted by the statutes of several Western States, but much cheaper and quicker. These patriarchal ideas of divorce still survive in certain countries where the Mohammedan law prevails. In such countries a man may divorce his wife by simply repeating the words, "Thou art divorced," three times. While this is considered a violation of the law, still the divorce is legal. The chief causes for divorce under the Mohammedan law are: inequality of race or tribe, insufficient dowry—if the specified amount is not paid—refusal to embrace the Mohammedan religion, unjust accusation of adultery against the wife; apostasy to Islam, or if the husband flees from a non-Moslem country to a country of Islam and the wife refuses to accompany him.

While the husband under Mohammedan law is given a wide latitude in matters of divorce, a wife may not divorce her husband unless she has stipulated this right in the marriage contract, in which case she may apply to the cadi, who will pronounce a divorce without naming specific reasons. In actual practice, however, divorces are not more frequent in Mohammedan countries than in those which boast of the higher civilization and the benign influences of "evangelical" teaching. Under the Mohammedan system there is no disgrace or even humiliation associated with repudiation. The divorcee returns

to her family and after a year's interval may remarry. Moreover, the husband is obliged to provide for the maintenance of the children who accompany the mother.

Not only were there systems of marriage and divorce among the ancient civilized nations, but they also existed among nearly all primitive races, including the American Indians, the African tribes and the inhabitants of the Pacific Islands. In his "Matrimonial Institutions," Professor Howard has gone into this subject extensively, and has incidentally shown that where divorce has been easiest there has sometimes been the least abuse of it. "This," he says, "is due to the fact that primarily marriage does not rest upon sexual instinct, but upon family needs. The American Indian tribes were conspicuous in this regard. Sometimes, too, we find the strongest sentiment against divorce, as in China, while among the ancient Japanese and the Aztecs, or even the Zulus, divorces were infrequent."

This attitude towards divorce may perhaps have been largely due to the fact that the woman was originally the head of the family or made subordinate to family interests. The question was not then whether one's husband or wife answered to the expectations of the heart or corresponded to one's ideal, but whether the union was for the good of the family.

In Japan, to-day, as Felix Adler has pointed out, a woman upon her marriage is adopted into the family of her husband and there is laid upon her the duty of filial devotion in that family, especially to the senior members of it. Consequently, it is considered a good ground for divorce in Japan, he says, if a man loves his wife too

much, or if a woman loves her husband too much. The divorce is pronounced by the elders of the family without consulting the husband and wife, on the ground that their particular affection for each other interferes with the performance of their duties to the whole family. It is much the same with European royal marriages made for political reasons.

The modern and directly opposite view of this, says Mr. Adler, is preached in Ibsen's "Nora." The reason that Ibsen's views and George Meredith's are listened to is because we feel our individualism so constantly that we think of marriage, in reaction against the old view of the family, simply as an individual affair and forget its vast social purpose.

With a more settled state of society in ancient days, certain formalities had to be complied with in order to obtain divorce; and this led to the introduction of the bill of divorcement among the Jewish people. In the thirty-fourth chapter of Deuteronomy we read: "When a man hath taken a wife and married her, and it come to pass that she find no favor in his eyes because he hath found some uncleanness in her, then let him write her a bill of divorcement and give it in her hand and send her out of his house. And when she has departed out of his house she may go to be another man's wife."

Commenting on this, Professor Lichtenberger has remarked that the attitude of Jesus towards divorce seems to have been influenced by the social conditions of his time. Divorce scandals were agitating Jewish society then. John the Baptist had been beheaded for rebuking Herod; domestic disorder was rampant in Rome. Jesus,

therefore, condemned bills of divorce and came out strongly for no divorce except for adultery. Behind his words, as recorded in the New Testament, certain churches have taken their stand in prohibiting absolute divorce and the remarriage of divorced persons. The following passages have thus exerted a profound influence on divorce legislation in Christian lands:

"The Pharisees asked: 'Is it lawful for a man to put away his wife for every cause?' and he answered and said unto them:

"'What did Moses command you?'

"And they said: 'Moses suffered us to write a bill of divorce and put her away.'

"And Jesus said unto them: 'For the hardness of your hearts he wrote you this precept. Have ye not heard that from the beginning of the creation God made them male and female and said, "For this cause shall a man leave father and mother and shall cleave to his wife, and they twain shall be one flesh"? Therefore, they are no more twain but one flesh. What therefore God hath joined let not man put asunder.'

"They said unto him: 'Why did Moses then command to give a writing of divorce and to put her away?'

"He said unto them: 'Moses because of the hardness of your hearts suffered you to put away your wives; but from the beginning it was not so. And I say unto you, whosoever shall put away his wife except it be for fornication and shall marry another committeth adultery; and whoso marrieth her which is put away committeth adultery.'

"And his disciples asked him again of the same matter. And he saith unto them: 'Whosoever shall put away his wife and marry another committeth adultery against her. And if a woman shall put away her husband and be married to another she committeth adultery.'

"His disciples said unto him: 'If the case of the man be so with his wife it is not good to marry.' But he said unto them:

"All men cannot receive this saying save those to whom it is given. . . . He that is able to receive it let him receive it."

In the age of Jesus, and in a far earlier time, there was an ease of morality which, according to our present standards, was akin to savagery. While among the Jews, and especially after they had become monogamous, women seem to have had much freedom and to have exerted considerable influence in social and political life, concubinage was far from uncommon. It was not until the eleventh century that the Jewish custom of granting the husband absolute right of divorce was abolished. By the Mishnah various modifications were introduced, and the husband under that code was granted divorce only for certain well-defined causes, including fraud, barrenness of the wife, her long absence under certain conditions, such as captivity, and the taking of certain religious vows. Before that time the wife had no right to give her husband a bill of divorce. The Mishnah permitted her to obtain divorce for the refusal of the husband to cohabit with her, his contraction of certain diseases, such as leprosy, his engaging in a disreputable business, refusal to support, cruelty and licentiousness.

Among even the highly intellectual races of ancient times the position of woman was notably inferior. The Greeks, even in the golden age of Pericles, held the marriage relation in very little sanctity. It was reputable for men to loan their wives to their friends and divorce was easy and frequent. Hellenic literature attempted to make poetry of vice, and marital infidelity and adultery were the chief pastimes attributed to the gods and goddesses. Strangely enough, the views of Plato had some resemblance

to those of the present age. He believed not only in the economic freedom of women, but also in free motherhood. It has been asserted, of course, that Plato did not esteem highly the women of his time, for in the main he could not; but that he saw great possibilities in the sex is evident from some of his writings. Without the development and coöperation of woman he realized that a race was bound to deteriorate; but with equal opportunities and equal development for men and women an almost ideal society might be evolved.

The Romans had more of the moral and religious in their character than the Greeks, and from the time of Romulus divorce seems to have been regulated by law. In civilized Rome marriage was recognized as a regular institution by the civil code, three legal forms being prescribed, each differing somewhat in the status they created. They were as follows:

1. *Confarreatio*, which conferred a sacramental character upon the union, and was open only to patricians. A marriage of this description could not be easily dissolved.

2. *Coemptio*, the fictitious sale of the wife to the husband by her parents under a formal bill of sale, which could be annulled by an equally fictitious resale.

3. *Usus*, the establishment of marriage by cohabitation of the parties for a year or more, which corresponded to the Scotch system of "marriage by reputation." This could be dissolved by a *libellus repudii*, corresponding to the Jewish bill of divorce.

All these were lawful modes of marriage, and were subject to certain restrictions. At first, they brought the wife

entirely under the control of the husband and made her and her children subject to his authority. The husband alone could divorce the wife, the latter having no right to bring in action. In the case of *usus* marriage the union could be dissolved without the intervention of any court. This was the greatest latitude ever given by the divorce laws of any of the ancient civilized races and it occasionally led to a certain degree of license. We read, for instance, of Cato the younger loaning his wife, Marcia, to Hortensius, and taking her back after the orator's death. Such instances as these, however, have their counterpart at the present time when certain men and women are repeatedly divorced and remarried. In the later days of the Roman Republic there was a marked change in public feeling in favor of the equality of men and women even in the matter of sexual morality. Writers, at that time, pointed out the injustice of a double standard of morality which permitted the husband a license denied to the wife. This ultimately led to the establishment of equal rights for both sexes in relation to marriage and divorce.

The developments of the later Roman period are of supreme importance in connection with our study, because it was practically in this era that the history of the marriage system of modern civilized people began. The result of centuries of social progress, the Roman marriage system reached its climax at the time when the foundations of the Roman law were being laid, a system of jurisprudence which has had a far-reaching influence on the civilized world. As subsequent chapters will show, the general tendency of modern times seems to be towards an eventual return to the system of marriage and divorce.

evolved by Roman civilization. This age is witnessing the same advance of women towards complete independence, combined with which there is an increasing demand that certain conventional features of marriage shall be abolished, that there shall be a general relaxation of the laws of divorce, and that an equal standard of morality for both sexes shall be recognized.

It is customary for the opponents of marriage reforms and liberal divorce laws to warn modern society against reviving "the iniquitous customs of pagan Rome." To emphasize this warning they have asserted that the Roman matrimonial system was largely responsible for bringing about that laxity of morals and social decadence to which the downfall of the Roman Empire was fundamentally due. A great difference of opinion, however, exists upon this point.

In his work, "The Greatness and Decline of Rome," Guglielmo Ferrero, the eminent Italian historian, has taken an unfavorable view of the Roman systems of marriage and divorce. In discussing conditions in the age of Augustus, he remarks that "the Roman family, by that time, had been transformed into the freest form of sexual union ever seen in western civilization, and comparable only to that free love which some modern Socialists regard as the marriage of the future." He also says: "Rites and ceremonies became no longer necessary; marriage depended upon mutual consent, a certain level of moral dignity, and in Roman phrase, upon 'marital affection'; it could be dissolved for incompatibility of temperament, mutual indifference or unworthy conduct. The only outward and visible sign of the union was the dowry.

If a man took a free woman of honorable family to live with him, the act made them man and wife and their children legitimate; if the marriage state proved displeasing, they separated and the marriage was dissolved. . . . All this marked the downfall of the family life since the women of the Roman upper classes had lost the old feminine virtues of modesty, obedience, industry and self-respect."

Other writers have asserted that the emancipation of Roman women brought evil as well as good. Boys and girls received the same education, and the influence of womanhood reached a wonderful height. Women, at last, attained such absolute control over their property and so much capital became concentrated in their hands that about the middle of the second century B.C. the Voconian law was passed to prohibit bequests to them, with the usual futile results of such legislation. And yet, in the midst of these social upheavals and the advent of the Roman "new woman," the old ideal of the industrious housewife never died out, and Roman epitaphs for ages recorded that the model matron was a wool-worker and a keeper of the home.

Other authorities have taken an entirely different view of Roman conditions, and have pointed out that the charges of licentiousness against the Romans have been chiefly based on the statements of satirical writers, such as Juvenal and Tacitus, and it would be idle to expect such writers to give a well-balanced picture of a great civilization. Professor Howard (in agreement with Lecky) considers that the freedom of divorce was abused by only a small section of the Roman population, and that

such abuse, so far as it existed, was not the cause of any decline of Roman morals. The same opinion has been expressed by Dr. Havelock Ellis in his profound work, "Studies in the Psychology of Sex." In describing the position of women in the later Roman period, he says:

"In the last days of the Republic women already began to attain the same legal level as men, and later the great Antonine jurisconsults, guided by their theory of natural law, reached the conception of the equality of the sexes as a principle of the code of equity, the patriarchal subordination of women falling into complete discredit. In the best days of Rome, the wife was independent of her husband (especially as she came to him with her dowry) and only nominally dependent upon her family. Marriage was a private contract, accompanied by a religious ceremony, if desired, and being a contract it could be dissolved by either party for any reason, in the presence of competent witnesses and with due legal forms, after the advice of the family council had been taken. Consent was the essence of this marriage and no shame therefore attached to its dissolution. Nor had it any evil effects, either on the happiness or the morals of Roman women. Such a system is obviously more in harmony with modern civilized feeling than any system that has ever been set up in Christendom. It is interesting to note that this enlightened conception of marriage prevailed in the greatest and most masterful empire which has ever dominated the world, at the period of its fullest development."

As Dr. Ellis has pointed out, the noble Roman conception of the equality of men and women and the dignity and freedom of marriage was lost in the downfall of the Roman Empire which followed the conquest of Italy by the Germanic invaders. Among the Teutonic races generally, as among the early English, marriage was a private transaction, and took the form of a sale of the bride by her

father or other legal guardian to the bridegroom. The wedding ring simply represents the earnest money which was originally paid to bind the bargain, and was the sign of the bride's purchase. Other forms of subjection were also common among the Teutonic people. In the ancient English ritual, for instance, the forms direct the bride, after delivery of the ring, to fall at her husband's feet and sometimes to kiss his right foot. In Russia also the bride kissed her husband's feet.

Up to the time of the Emperor Justinian, two hundred years after the Roman Empire nominally embraced Christianity, *usus* continued to be the ordinary form of marriage. Women were still allowed a large degree of freedom and also had the right to divorce, a formal intimation by either party being sufficient to terminate the union. If there were any children and neither party was at fault, the father usually took the custody of the boys, the mother of the girls. If the divorce was due to the father's fault, the wife was entitled to the children; if the mother was in the wrong, the father took charge of them. Under Justinian certain restrictions on divorce were introduced, only three causes being legally recognized—impotency, the desire of one party to enter monastic life, or the fact that one had been held a long time in captivity. Although these restrictions were abolished in the next reign, their introduction was significant. In contrast to Roman law, which gave either party the right to dissolve a marriage, European civilization, for the first time, departed from that view of matrimony and recognized it as a sacramental bond, in accordance with the ideas of the Christian church.

In commenting on this, Dr. Ellis has remarked that

while Christianity, at first, was not anxious to set up marriage laws of its own, yet it gradually revealed a growing ascetic feeling, hostile alike to the dignity of married women and the freedom of marriage and divorce. With that was combined the influence introduced through the Bible, of the barbaric Jewish marriage system, which conferred on the husband rights in marriage which were totally denied to the wife.

Under the influence of ascetic ideas, the early Christian fathers opposed marriage and denounced it as sinful. Even St. Paul was inclined to take this view. He commends marriage, it is true, (Chap. 7, 1st Corinthians), but simply as a remedy against sexual irregularities. "It is better to marry than to burn," he says. This view of marriage, however, could hardly be acceptable to delicate-minded men and women who have felt the ennobling passion of love as distinct from, although subsequently including and refining that perfectly proper and natural feeling which poets have termed desire.

Following these ideas of St. Paul, his disciples, in a later generation, quite logically took a degrading view of women. From being considered among the primitive pagans as the natural spoil of man, woman among the primitive Christians came to be regarded as the spoiler and temptress, a trap for men's souls, cunningly baited by the devil. She was to be kept at a distance as highly dangerous. Hieronymus says: "Marriage is always a vice; all we can do is to excuse and cleanse it." At the same time, the doctrine of the divine sacrament of marriage was growing up, and was developed by Tertullian, St. Augustine and others, although it was not recognized

as a dogma of the church until the twelfth century. It is only just to add that it was due to the teachings of the church that the opinion of St. Paul was largely counteracted, and the position of woman was raised. Through the exaltation of the Virgin as an equal object of veneration with her son, much was done directly towards placing womanhood on a higher basis. It was probably because of this early idea of one sacred motherhood that all motherhood, with the advance of civilization, has become more sacred, at least in theory, and from this idealization of womanhood the chivalrous ideas of the middle ages may be said to have arisen.

The early Christians, it has been said, did not treat marriage as a sacrament, although its celebration was usually the occasion of prayers and exhortations. Even in the early periods, however, the church was opposed to the laxity of Roman marriage customs, and this was formally declared in the twelfth century. In 1164 marriage was incorporated in the list of seven sacraments of the church in the Sentences of Peter Lombard, and this was reaffirmed at Florence in 1439. The Council of Trent in 1563 redeclared marriage to be a sacrament of the church and placed the whole subject under ecclesiastical jurisdiction. Marriage was now no longer performed except with the rites of the church. The general marriage laws of the European continent, it may be added, have been derived and developed from the edicts of the Roman emperors and the decrees of the Christian church.

From the earliest times the Roman Catholic Church has been a steadfast opponent of divorce. Except by special dispensation, which is seldom granted, no member

of that church, although divorced by the civil power, is permitted to take another consort during the lifetime of the true husband or wife. In setting forth the view of the Roman Catholic Church, Cardinal Gibbons has said:

"By divine authority, Adam said to his wife: 'This now is bone of my bones and flesh of my flesh; she shall be called woman because she was taken out of man. Wherefore a man shall leave father and mother and shall cleave to his wife: and they shall be two in one flesh.' . . . Christ reasserted, in clear, unequivocal terms, the sanctity, unity and indissolubility of marriage. . . . He made marriage a sacrament. . . . The church is firmly in opposition to divorce. It is written: 'Whoever shall put away his wife and marry another committeth adultery against her. And if the wife shall put away her husband and be married to another, she committeth adultery.'

"Of course, I am well aware that upon the words of our Saviour, as found in Matthew, Chap. xix, 9, many base the right of divorce from the marriage bond for adultery, with permission to remarry. But, as is well known, the Catholic Church, upon the concurrent teaching of St. Paul, interprets our Lord's words, quoted by St. Matthew, as simply permitting, on account of adultery, divorce from bed and board, with no right to either party to marry another."

The general recognition of this doctrine in the middle ages was sufficient to prevent the enactment of any laws permitting absolute divorce, and in certain countries to-day where ecclesiastical influence is strong, this condition still exists. To the fact that death alone can bring freedom to the mismated a large amount of immorality and crime is said to be directly traceable. These modern conditions had their counterpart in the middle ages when, as certain historians have asserted, husbands and wives in their efforts to obtain freedom from a married life that

was intolerable not infrequently resorted to murder by poisoning or hired assassins. Many wives were condemned as witches at the instigation of their husbands, and husbands were denounced to the Inquisition as heretics by their wives.

The leaders in the change of matrimonial law were the Protestant reformers. Luther was among the first to deny that the church and marriage have anything in common. Marriage, he declared, is the free will of those who participate in it and does not concern the church. Thus he paved the way for the civil contract theory of marriage. Further, he asserted that marriage and divorce should be left to the civil law, because marriage is an earthly and external thing. Nevertheless, he was still so much influenced by tradition in his estimate of the character of marriage that he still referred to it as a sacrament.

The early church, as has been explained, looked upon marriage as a palliative but necessary concession to man's fallen nature; a palliative for an hereditary disease. Lutheranism, it has been said, was a bridge between the two logical views of the universe—the Catholic-Christian and the individualist-monist. Luther's view was that in sexual life unchastity was synonymous with every form of sexual relation outside of matrimony, while chastity became equivalent to every form of marriage.

With the progress of Protestantism, the control of the church over marriage was gradually displaced, and the subject of divorce, among other things, was carefully considered by the early reformers. They were mostly divines, eminent for learning and piety, and they came

to the conclusion that wilful desertion was a scriptural ground for divorce. Luther, Bucer, Beza, Melancthon and Calvin were among those who maintained this opinion, which was adopted by the whole body of Protestants in continental Europe. This view of divorce is still held by most of the Protestant churches, a fact which has had an important influence on divorce legislation in Germany and elsewhere.

In England, as all students of history will recall, the Reformation received its first official recognition through the divorce of Henry VIII from his queen, Catherine of Arragon. Henry had endeavored to obtain a decree of nullity from the Pope on the ground of consanguinity, Catherine having been the king's sister-in-law. But although Henry was a powerful monarch, the Pope was more afraid of his Most Catholic Majesty, the Emperor Charles, the queen's nephew, who did not wish to see his aunt divorced and thus deprived of her status as Queen of England. Becoming tired of negotiations with Rome, Henry in 1537 left the historic church and denied the Pope's jurisdiction in England, declaring that he himself was the head of the church. A leading figure at the time was Thomas Cranmer, whom the king created Archbishop of Canterbury. In 1533 Cranmer had pronounced sentence declaring the marriage between Henry and Catherine to be null and void.

In the work of reformation which followed, Cranmer obtained the appointment of a Royal Commission on the laws of England, and among the new statutes which were drawn up an ample provision was made for divorce. This Commission, Cranmer himself being president, came to

the conclusion that divorce should be granted not only for misconduct, but also for desertion and incompatibility of temper, while separation without the power of remarriage was pronounced bad for both parties and the state.

Cranmer was an outspoken opponent of judicial separations which he strongly condemned because (1) such a form of relief for the unhappily married was an ecclesiastical survival having neither the warrant of common sense nor of Scripture, and (2) because being contrary to nature its retention must do harm to morals and social order. Writing at that time, Cranmer said: "It has been the custom in many cases to separate husband and wife from bed and board, the bond of marriage between them remaining unbroken; but since this provision is foreign to the sacred gospels and involves supreme evil, and has brought a reek of evils into marriage, it is our will that by our authority it be altogether abolished." Among the churchmen who indorsed Cranmer's views were the Bishops of London, Winchester, Ely, Exeter and others. In the reformed Book of Common Prayer put forward at that time, baptism and communion were alone recognized as sacraments, marriage and five other sacraments of the former church being excluded as having no possible sign or form ordained of God. Marriage was distinctly recognized as a civil contract.

The report of Cranmer's commission was brought before the English Parliament in the brief reign of Edward VI, but before action could be taken the young king died, and the accession of Queen Mary brought about the restoration of the Roman Catholic Church. With the

trial and condemnation of Cranmer, on a charge of treason, the work of the reformers in England came to an end for the time being.

When Queen Elizabeth ascended the English throne and Protestantism was again restored, that queen was found to be extremely high church in her ideas. She even refused to recognize the wife of Parker, the Protestant Archbishop of Canterbury, owing to her peculiar views regarding the celibacy of the clergy.

Consequently, no attempt was made to bring forward Cranmer's proposals. By the Church of England marriage continued to be recognized as a sacrament and no provision was made for divorce. Judicial separations only were permitted, and these were granted by an ecclesiastical court, because marriage was regarded as a matter under the control of the church.

The natural conservatism of the English people probably caused them to be greatly influenced by ancient religious traditions; and it is certainly true that at the time of Cromwell, when all England was traversed by evangelical preachers and the high church party had been completely swept from power, the impress of the Roman Catholic doctrine was still left upon the English courts and the minds of the people. It was at that time (1643) John Milton wrote an able treatise on divorce, advocating a liberal divorce law for England, and asserting that a few casual words of Christ upon a Jewish custom submitted to him for observation were not intended to form a legal code binding upon the English people. He called attention to the fact that England alone among Protestant countries had retained the sacramental idea of marriage

and the idea that neither adultery nor desertion could dissolve it.

Having had a checkered matrimonial career, Milton's arguments were based upon personal experience. Hence he took the same position as the modern marriage reformers in insisting that personal responsibility is the foundation of sexual relationships; that marriage is a private matter and therefore should be freely dissolvable by mutual agreement or even at the desire of one of the parties. It has been contended that Milton, in his treatise, did not demand the same privileges for the wife as for the husband; but it must be remembered that it would have been impossible for a seventeenth century Puritan to have obtained a hearing for any argument regarding the equality of the sexes. Such an idea would have seemed as dangerous and radical then as the views of Ellen Key seem, in these days, to certain conservative people.

Milton strongly advocated divorce for incompatibility, and even approved of self-divorce, asserting that divorce was a private matter with which the courts had positively no concern. As Bernard Shaw has done, he protested against the absurdity of authorizing a judicial court to toss about and divulge the unaccountable and secret reason for disaffection between man and wife. His whole argument was based on the theory that marriage was made for man and not man for marriage.

Milton's protest possibly paved the way for Cromwell's civil marriage act, which was passed in 1653, although no legislation took place in regard to divorce. Cromwell's act practically recognized marriage as a civil contract. According to its provisions marriage was sub-

ject to mutual consent, and could be performed by a justice of the peace, although the declarations of the contracting parties were of a religious nature. Provisions were also made for jurisdiction, registration, publication and all other civil functions, and in this respect the act has served as a model for the civil marriage laws of almost all civilized countries during the last two hundred years.

With the restoration of the monarchy in England, Cromwell's wise act was abolished, and ecclesiastical control of marriage was resumed. The Puritan conception of marriage, however, was carried over to America where it took root and flourished, the civil marriage system being introduced into the colonies of New England at an early period. In England the ecclesiastical law governed marriage until 1856, when the present civil marriage law was passed by Parliament. In France, it may be observed, civil marriage was a product of the Revolution of 1791, when a decree declared, "The law considers marriage only as a civil contract."

Until the reign of Victoria, a divorce in England could be obtained only by a husband, under a costly and complicated procedure, on the ground of the wife's misconduct. A decree of the Ecclesiastical Court—*a mensa et thoro* (separation from bed and board)—had first to be obtained, then an action had to be brought by the plaintiff against the man who had wronged him, and thirdly, an Act of Parliament was required to annul the marriage. In 1858 a law was passed which created the first English divorce court with the power to grant absolute divorce.

During the Colonial period the people of this country

were, of course, subject to the general laws of England, and these had some influence on our own laws when the thirteen original States formed their statutes after the Revolution. In most of the States, however, divorce was relegated to the civil courts, although in one or two instances the old English system of permitting divorce by act of legislature still survived. Delaware was the last State to abolish this custom. It still exists in Canada, and in most of the Canadian provinces divorce can be obtained only by Act of Parliament.

A few words in regard to the legal view of marriage may be appropriate at this point. According to a well-known legal authority marriage has been defined as "an act, ceremony or process by which the legal relationship of husband and wife is constituted." In most, if not all, legal systems, says this authority, marriage takes the form of a contract, the mutual assent of the parties being the permanent and indispensable feature of the ceremony. "Whether it is really a contract or not, and if so to what class of contracts it belongs are questions that have been much discussed. In the United States, however, it has been expressly decided that marriage is not a contract within the meaning of the constitutional law which prohibits State enactments impairing the obligation of contracts.

The question whether marriage is merely a contract or more than a contract, whether a purely civil or also a religious act, belongs to a similar order of inquiries. The theorist, however, has only to deal with marriage in so far as it creates the legal status of the husband and wife. But it should be added that while marriage is generally

spoken of by lawyers as a contract, its complete isolation from all other contracts is invariably recognized. And its peculiar position may be seen at once by comparing it with other contracts giving rise to continuous relationships with more or less intervening obligations, like those of landlord and tenant or employer and employee. In these the parties may in general make their rights and duties what they please, the law only intervening when they are silent. In marriage every resulting right and duty is fixed by the law.

As a rule, American courts have shown great deference to the decisions of the English common law and equity tribunals. This has also been observed in certain American decisions which have recognized that, while conditions may be imposed by the various State legislatures, yet ‘a marriage good at common law is good,’ notwithstanding the existence of any statute on the subject, unless the statute contains express words of nullity.

In Pennsylvania, for example, where a statute provided that a marriage should be solemnized before twelve witnesses, marriages that were not witnessed in this manner were nevertheless held to be valid. In New Hampshire justices were authorized to solemnize marriage and all other persons forbidden to do so under penalties; yet a marriage by consent, as at common law, without a justice or minister, has been pronounced legally binding. On the other hand, under a similar statute in Massachusetts it was held that the parties could not solemnize their own marriage, and that a marriage by mutual agreement, not in accordance with the statute, was void.

Eminent legal authorities have regarded this Massa-

chusetts case as an isolated exception to the general course of decisions. It may be further observed that in this country, and in most of the progressive European countries, the modern tendency has been towards recognizing marriage as a civil contract and quite distinct from any religious character which may be given to it by a subsequent ceremony."

It is of interest to note the present attitude of Christian churches in regard to divorce. While a considerable difference of opinion exists among them, most of the churches have shown a strong opposition to liberal divorce laws and have endeavored to check the growth of divorce. The unalterable position of the Roman Catholic Church, with its prohibition of absolute divorce, has already been mentioned. In England a similar spirit of opposition has been manifested by the established church, the high church movement and other influences having tended to uphold the sacramental idea of marriage and to maintain restrictions on divorce. In spite of the Protestant Reformation and the liberal views of its leaders, other English religious bodies have taken the same conservative position. The Church of England has been a bitter opponent of all attempts to mitigate the severities of the present English divorce law, a fact which seems astounding when it is recalled that Archbishop Cranmer, one of the early leaders of that church, was an earnest advocate of divorce for various reasonable causes.

The influence of English religious traditions has had its effect on religious bodies in this country. Among those which retain the sacramental principle of matrimony is the Protestant Episcopal Church of the United

States, which in 1910 adopted a canon prohibiting its clergy from solemnizing the marriage of any divorced person whose husband or wife was then living. This, however, was not to apply to the innocent party in a divorce for adultery, provided a year had elapsed from the time the divorce was granted.

The Presbyterian Church in the United States has adopted resolutions, at various times, condemning the increase of divorce, and in 1883 declared the marriage relation to be an ordinance of God essential to social order, morality and religion. In 1903 ministers of the church were ordered to abstain from officiating at the marriage of divorced persons, except of such persons who had been divorced upon grounds and for causes recognized as scriptural. Wilful desertion is one of the causes recognized by this church. Similar action has been taken by the Methodist Episcopal Church. In 1884, the General Conference of this denomination adopted a resolution declaring adultery to be the only cause for divorce recognized by the church. Ministers were forbidden to marry any but the innocent parties in divorces obtained on the ground of adultery. The Reformed Church in America, in 1904, adopted a similar resolution.

On the other hand, the General Synod of the Evangelical Lutheran Church in the United States (that church having derived its theological ideas from Germany) expressly declared, in 1907, that Lutheran theologians from the Reformation to the present day have recognized two scriptural grounds of divorce, namely, adultery (Matt. v, 32, and Matt. xix, 5-9) and wilful or malicious desertion (1 Cor. vii, 15). Ministers of the church were therefore

authorized to officiate at the marriage of innocent parties in such cases.

The National Council of the Congregational Churches of the United States, in 1895, adopted a report that in Scripture no doctrine of divorce exists other than that stated by the Saviour in Matthew xix, 1-9. In 1901 ministers were requested not to officiate at the marriage of those whose divorces had been obtained on other than scriptural grounds.

In spite of this action of the churches, the whole tendency of modern times is towards the recognition of marriage and divorce as purely civil matters, uncontrolled by any ecclesiastical influences. Nevertheless, it must be conceded that religion has always exerted a conservative influence on society, and while, as we have seen, the economic progress of the age is causing an increasing divorce rate, religion has undoubtedly acted as a repressive force, and has placed certain checks on the free operation of modern tendencies. That changes in the status of the family have not been more rapid has been largely due to these conservative influences of religion. As to the practical effect of religious opposition on the growth of divorce, the fact remains that while the churches have adopted resolutions and enacted laws with a view to combating what they regard as a national evil, the divorce rate has continued to mount higher than ever.

This, however, is not to be regarded as any proof that society at large is tending to throw off moral restraints and that religion is losing its hold on the public conscience. It is rather an evidence that a change has taken place in

standards of thought and morality. With the progress of time, outward piety and church-going have ceased to be considered the chief evidences of virtue, while character and social service in these days count for a great deal more. As the result of this, an increasing number of people are led to do their own thinking in religious matters, thus asserting the right to live their lives and worship God according to the dictates of their own consciences without dictation from the church or clergy.

The modern intellectual era, which practically began in the middle of the last century—notably with the appearance of Darwin's "Origin of Species" in 1859, and the later publication of Herbert Spencer's works—has also been marked by a complete change in modern ethical and religious ideas. To a lesser extent the same may be said of the progress of the so-called "higher criticism." Through these and other influences, men and women have gradually become less subject to the dogmatism of the churches; and with the increasing demand for individual freedom they are constantly growing more intolerant of evils that were formerly endured.

The long struggle for the civil control of marriage and divorce, as outlined in this brief historical review, is having a wholesome effect to-day, and the triumph of liberal ideas is destined ultimately to bring about a greater degree of morality. Among intelligent people, as a recent writer has well said, higher ideals of marriage are constantly becoming apparent, and are based on the realization that a sincere love between a man and a woman, creating harmonious and intellectual companionship, can alone

constitute a satisfactory foundation for such a relationship. And with this idea there is also arising a growing conviction that all forms of coercion in marriage are in direct opposition to human liberty and free institutions.—

XI

DIVORCE PROBLEMS IN ENGLAND

CONDITIONS WHICH HAVE LED TO THE PRESENT DEMANDS
FOR REFORM

THE remarkable changes resulting from social progress have not been confined to the United States, but are to be witnessed in all other civilized countries. With the spread of industrialism, the altered status of the home, the economic emancipation of women, and all the other consequences of social evolution, a multitude of new problems affecting marriage and divorce have been created to bewilder statesmen and puzzle law-makers. This has been notably the case in England, where one of the greatest social revolutions of modern times is now in progress.

As the common law and many of the institutions of the United States have been derived from England, and that country to-day is facing various problems which are also confronting our own land, a study of English conditions in matters of marriage and divorce is of peculiar value. From such a study comparisons may be drawn and conclusions may be reached which are peculiarly applicable to American conditions. The English divorce law, for example, is extremely severe, and the evils that have resulted from this severity are well worth considering in these days when so much is being urged in favor of

greater restrictions on divorce. In England, moreover, we find the same contest is being waged between those who cling tenaciously to old ideas concerning the sanctity and indissolubility of the marriage contract and those who advocate reforms more or less radical.

For a country so enlightened in most matters of social welfare, England has been notoriously backward in legislation which would bring the legal conditions of marriage and divorce into greater harmony with modern requirements. And this seems rather surprising when it is considered that most English political movements and reforms, at the present day, are far more radical in spirit and effect than those in this country. Of this the women's suffrage movement may be taken as a good example, the militant methods of the English suffragists having absolutely no counterpart in the United States. The same may also be said of recent English legislation, such as the new system of land taxation, workmen's unemployment insurance, old age pensions, and other evidences of Socialism. But in the midst of all these astounding developments of recent times, the English divorce law remains practically unchanged, and this is distinguished by certain archaic features that even less progressive countries have discarded.

The fact is that England to-day presents a strange mixture of conservatism and radicalism, with a rushing to extremes in some directions and an immovable adherence to old customs in others. This has been especially noticeable in the slow acceptance of new ideas on the subject of marriage; for it is to be remarked that although England is the home of such distinguished radical reform-

ers as H. G. Wells and Bernard Shaw, the views of writers of this type have had a far milder effect on the great mass of the people than has been the case in this country. The same is true of the works of Ibsen and Ellen Key and other writers of the Scandinavian and Germanic schools, which, in spite of the stir they have made in continental Europe and America, have had only a limited circulation in Great Britain.

An explanation of this conservatism on the marriage question may perhaps be found in the fact that until the middle of the last century, marriage and divorce were both largely under the control of the English state church. As the preceding chapter has shown, it was not until the reign of Victoria that the first English divorce court was established and provision was made for civil marriages. Until then, except in the case of Roman Catholics, Quakers and Jews, people belonging to independent religious denominations could be married only in parish churches by Church of England clergymen. By Acts of Parliament, however, equal rights to all sects were eventually granted, and nowadays in addition to marriages according to the rules of the established church, civil ceremonies can be performed at register offices by registrars, one of these officials being stationed in each district. People belonging to denominations outside the Church of England can also be married in their own churches, although in some cases the law requires that a registrar and two witnesses must be present.

Marriage licenses, it may be added, are not so easily obtained in England as in America, for not only must the contracting parties have lived in one district for at least

three weeks prior to the ceremony, but fees ranging from \$2.50 to \$10 must be paid. The first named amount covers the cost of an ordinary civil marriage at a registrar's office, while the latter sum has to be paid for what is known as a special license, which enables the ceremony to be performed immediately.

The marriage regulations in Ireland are much the same as in England, but in Scotland three forms of marriage are permitted. There is the church wedding at which a clergyman of any denomination may officiate, then there is the civil marriage by a registrar, and, thirdly, there is what is called an irregular marriage which, however, is perfectly legal. This practically corresponds to what is known in the United States as a common-law marriage. Couples who unite by means of an irregular marriage simply make a written or verbal declaration in the presence of two witnesses, to the effect that they intend to live together as man and wife. This constitutes a marriage and registration is not essential.

Probably no event of recent years has had such an important influence on the whole subject of marriage and divorce in England as the women's suffrage movement. However one may regard the militant tactics of its followers, it must be conceded that the effect of this movement has been beneficial to women as a whole; and, in the end, it seems destined to raise the standard of womanhood among the British masses, and to bring about some wholesome reforms in the present laws.

It must be remembered that the so-called emancipation of women and their progress towards economic independence has been far more recent in England than in

this country, a fact which possibly accounts, in a large measure, for the slow growth of the English divorce rate. Women in England have been more backward than American women in asserting their rights, and they are still hampered by certain old-fashioned ideas of propriety and woman's sphere which, fortunately, have been discarded in America. Various industries and professions are still closed to them, and it was only recently that the Law Society of England denied women the privilege of admission to the bar on the ground that "they had not learned to be honest"!

Englishwomen are also the victims of certain legal disabilities in respect to property rights and other matters that have been abolished in the United States; the English laws still recognize a double standard of morality for the two sexes; and it was only in the last generation that the English courts declined to recognize the traditional right of an Englishman to administer corporal punishment to his wife—a right strongly upheld by that great legal authority, Blackstone. While this remarkable privilege was always more honored in the breach than in the observance among the educated classes, it seems to be permitted to-day to men of a lower social grade, to judge from the following item which appeared recently in one of the London newspapers:

CONTROLLING A WIFE

A man complained to Mr. Symmons, the magistrate at Woolwich police court, that his wife was "most violent" towards him, but he had up till now refrained from striking her.

Mr. Symmons said that was manly, but a Lord Chief

Justice had laid it down that a man could thrash his wife with a stick so long as it was no thicker than his thumb. He was not there to quarrel with that dictum, and he advised the man that he could control his wife—take reasonable means to control her.

The Applicant: "Thank you, sir. Now I know what to do."

If such advice as this had been given in open court by an American police magistrate it is easy to imagine what an outburst of indignation it would have excited from one end of the country to the other. In England it failed to arouse the slightest comment.

Largely as the result of the women's suffrage movement in England there has been, for some years, an increasing uprising against all forms of injustice to womanhood; consequently the legal inequalities, the barring from trades and professions, and the social shackles inherited from past ages are all bound to disappear.

In no other branch of the English law has traditional injustice been so glaringly apparent as in the existing system of divorce. That the present divorce law is extremely severe will be seen from the following summary extracted from one of the English legal text books:

"A husband can obtain a divorce upon proof of adultery of the wife, or a judicial separation on the ground of adultery, cruelty or desertion without cause for two years and upwards.

"A wife can obtain a divorce on the ground of her husband having been guilty of incestuous adultery and other crimes, adultery coupled with cruelty, adultery coupled with desertion without reasonable cause for two years and upwards, or a judicial separation on the ground of adultery, cruelty or desertion without cause for two years and upwards."

Under the present English law an unjust discrimination is made between the rights of men and women. The law, for example, refuses to release an innocent wife from an unfaithful husband unless the latter adds assault and battery to infidelity or deserts her for two years. If he does not desert her and is not guilty of cruelty, he can sin with impunity, whereas a single act of unfaithfulness on the part of the wife enables him to bring her before the judgment seat and annul the marriage. This is in direct contrast to the laws of almost every other civilized country.

Desertion has been strangely defined by the English courts. According to a recent decision, the fact that a husband left his wife and cohabited with another woman, visiting his wife only occasionally, did not amount to desertion, and the wife was therefore debarred from relief. It has also been decided that a wife seeking divorce must be able to prove that both offenses were committed with the same woman. If the husband entered into a bigamous union with one woman and committed the offense with another woman, the wife had no grounds for divorce. The effect of the English law therefore is, that if a husband merely misconducts himself and commits no other matrimonial offense his wife can only obtain a judicial separation, and this puts a premium on immorality. Moreover, a wife who obtains a separation on the ground of her husband's desertion is debarred thereafter on that very ground from obtaining a divorce.

In addition to these injustices, the cost of a divorce suit in England is, at present, so high that only the well-to-do classes can obtain the benefits of divorce. The poor

are almost debarred. An undefended divorce suit costs about \$250, while in a defended action the cost ranges from \$350 to \$2,500 or over. By a Parliamentary Committee it has already been recommended that county courts should be given a limited jurisdiction in matrimonial cases with the power to grant divorces to poor litigants. Under the existing system all divorce cases have to be tried in London at great expense.

At the present time, it would seem that in Great Britain the growth of divorce has been remarkably slow. England and Wales report only two divorces annually in every hundred thousand of population, Scotland four, while Ireland presents figures so small as to be practically negligible. In Ireland, however, nine-tenths of the people are Roman Catholics who do not recognize divorce, and nearly all the divorces granted are awarded to Protestants. Yet, small as the number of divorces is in England and Wales, those countries, nevertheless, have shown an increase in the last four decades, for while in 1867 a total of 130 divorces was recorded, in 1906 the number of divorces and separations was 670, the largest number up to that time ever granted in a single year.

As in this country, a large proportion of the people who seek divorce in England are childless. Sir John Macdonell, who investigated this subject thoroughly, found that during a considerable number of years, in which 9,284 divorces were granted, the parties in 3,673 cases were childless; in 2,500 there was but one child, in 1,500 there were two children, and in 1,600 from three to six.

In recent years there has been a steadily increasing agitation among progressive Englishmen and English-

women for an amendment of the present severe and oppressive divorce law of England. This movement resulted, six years ago, in the organization of the Divorce Law Reform Union under the direction of Sir Arthur Conan Doyle, the Rev. R. J. Campbell, Sir John Cockburn, Sir Frederick Pollock and other distinguished men.

In calling public attention to the injustices of the present law, the Union pointed out that as things are, the mere fact that a husband has been convicted of a crime and condemned to a long period of imprisonment does not entitle a wife to a divorce, nor does the fact that a husband has been confined in an asylum for many years as incurably insane. It was urged that whenever a new law is enacted these two grounds for divorce should be included in it. Other causes which the Union believes should be recognized are: malicious desertion for three years and habitual cruelty and drunkenness. It was also insisted that in divorce proceedings men and women should be given equal rights.

In agreement with the opinion expressed by some American sociologists, the Union severely condemns judicial separations. In this connection the following extract from a booklet issued by the Union is of special interest:

"The social dangers arising from judicial separations and prevention of remarriage are apparent. As must inevitably happen, the parties being denied any reasonable prospect of realizing happiness in a more fortunate marriage, in many cases form irregular alliances without regard to the law. But, in addition, the system of permanent separation inflicts a grave wrong by punishing the innocent party with the sins of the guilty, for it compels the former to live a celibate and cheerless life.

"The extent of the evil of separation will be realized when it is stated that since 1895 upwards of 200,000 persons have been affected by magisterial separations alone.

"The inevitable result of judicial separations is the formation of such social irregularities as bigamy and other illicit unions, concubinage, prostitution and illegitimacy, and the formation of an unhealthy public opinion which if it does not professedly encourage does little to check perjury, collusion and the evasion of the law."

Lawyers, judges and other public men in England, it may be observed, are strongly in favor of the amendments proposed by the Divorce Law Reform Union.

As the result of some vigorous work performed by this organization, a Royal Commission was appointed in 1909, under the presidency of Lord Gorell, ex-President of the Probate and Divorce Division of the High Court. Its object was to inquire into the present state of the divorce law, and especially with regard to the position of the poorer classes. Among the members of the Commission were the Archbishop of York, Lady Frances Balfour, Mrs. H. J. Tennant, Judge Atkinson and Sir Frederick Treves.

After conducting an investigation for two years and taking the testimony of judges, magistrates, clergymen and others who had studied the divorce question—some of the witnesses being Americans—the Commission completed its work in 1911, and its report was issued in two sections. The majority report, which was supported by Lord Gorell, the president of the Commission, proposed that in addition to the present ground of adultery, divorce should also be obtainable for desertion for three years, cruelty, incurable insanity, habitual drunkenness persist-

ing throughout three years, or life imprisonment inflicted for murder in place of a death sentence. This was the most important matter the Commission had to consider.

In urging that divorce should be granted for other causes than adultery the report said:

"So far from such reforms as we recommend tending to lower the standard of morality and the regard for the sanctity of marriage, we consider reform necessary in the interest of the sanctity of marriage as well as in the interests of justice, society and the State."

The Commission further recommended that the cost of divorce proceedings should be greatly reduced in order to furnish relief to the poorer classes.

The minority report, signed by the Archbishop of York, Sir William Anson and Sir Lewis Dibdin, notable as an ecclesiastical lawyer, denied that there is any real demand for easier divorce in England. It called attention to the "lamentable fact that in classes which mainly use the divorce court the restraint and obligations of family life have been weakened." The report added: "There is at work in all classes a strong tendency against the continuous union of man and wife; therefore, the State should strengthen rather than relax the strictness of its marriage laws." Nothing of this kind, however, was recommended. The report further asserted that the recognition of cruelty and three years' desertion as grounds for divorce would tend to increase the number of collusive divorces. "It has been urged," says the report, "that collusion is not observed to follow the law respecting desertion in Scotland, to which it may be replied that in America, where the experience is on a far vaster scale,

it has followed to such a degree as to scandalize all decent people."

Upon certain points all the commissioners agreed, and this was especially the case in regard to the question of sex equality in divorce; the opinion being that the double standard of morality is unjust, and that a divorce should be granted to a woman for the same reasons as to a man. It was also agreed that the granting of divorce should be no longer confined to the courts in London, though the majority and minority differed as to the number of local courts required. The commissioners were also unanimous upon another point—that of exercising control over newspaper accounts of divorce proceedings.

When the reports come before Parliament a bitter contest is expected to take place between those who advocate a divorce law in accordance with the enlightened spirit of the age and those who uphold traditional ideas. At the present time England is divided into two intensely hostile factions on this question. The supporters of the minority report insist that the easier and cheaper divorce system recommended by the majority report would have a demoralizing effect upon the home and the moral life of the nation. While there is a unanimous indorsement of the provision that the two sexes should be placed on an equal footing as regards divorce, the supporters of the minority report insist that the grounds of divorce should not be extended. They also object to the recommendation that divorce cases should be heard privately, the details being withheld from publication until the trials are ended.

Most leaders of public thought in England are strongly in favor of the majority report, and among the well-

known writers who take this view is Sir Arthur Conan Doyle. "The majority report," he says, "brings hope to many who have long lost it. If adopted, it will make marriage purer and holier than ever. The minority report restates the old ecclesiastical position, which would have forbidden divorce utterly; only the crying needs of humanity were too strong for it."

On the whole, the Liberal press of England, which represents Nonconformist thought, favors the majority report, but the Conservative organs, voicing the opinion of the Established Church, support the minority report, asserting that the acceptance of the majority recommendation would transform England into a national Reno and sap the foundations of society. It is significant that most of the upholders of the minority report, whose opinions have appeared in the newspapers, are Church of England clergymen, and without exception they have based their opposition to easier divorce on purely religious grounds. Bernard Shaw, whose radical views on divorce have been quoted in another chapter, summed up his opinion of the situation in England in the following characteristic remark: "The moral of both the majority and minority reports is, 'Don't get married'." The controversy is likely to rage for some time, and meanwhile the outcome of the impending divorce legislation will be awaited with deep interest, for it marks a distinct advance in civilization, none the less admirable because so strangely belated.

Many and varying views were expressed by the witnesses who appeared before the Royal Divorce Commission. Some of them, including even clergymen, held that freedom of separation for serious grounds would, in the

long run, tend to more lasting and happier unions; but most of those who took this view would limit the right to marry after separation and would guard closely the rights of children. One suggestion in this direction was to place the matter of remarriage and the care and education of and provision for children, under the courts, with substantial discretion, on the ground that marriage is not merely a contract between parties, but a social institution of grave importance to the community.

A liberal view was expressed by a well-known lawyer, the late Sir George Lewis, who, in giving testimony before the Commission, said: "There should be absolute equality of the sexes in divorce." He urged that adultery, desertion, cruelty, lunacy and imprisonment for five years should be grounds for divorce in England. "I am strongly against judicial separations," he added, "and I think it is a wicked punishment for both husband and wife. Divorce is the preferable course in the interests of both parties and the children and the State."

Another witness who appeared before the Commission was Maurice Hewlett, the well-known author, who said that he wished to plead for the serious and sensitive who, like the Latin Church, regarded marriage as a sacrament. He was strongly of the opinion that infidelity in the husband should entitle the wife to a full measure of relief. In all cases bodily desire and spiritual intention were proper to good marriage, but with the serious-minded they were essential, and the absence of one or the other would vitiate marriage. That being so, the contract could not be regarded as necessarily perpetual since it was contingent on one of the essentials. No marriage law could be good

which could inflict anguish upon refined, sensitive and honest-minded members of the community. The more seriously one regarded marriage the more serious was the need of legal means of dissolving it.

"To those who wished to abolish divorce altogether or withhold it from the poor, it should be pointed out," said Mr. Hewlett, "that they are laying mines at the foundation of marriage itself and are going a step towards its abolition. Under the present system the honorable and the sincere are tempted to dishonor and insincerity. Marriage ought, therefore, to be voidable where desire and intention in either party have ceased."

The investigation has shown that men as well as women are victims of the present English laws. Under the existing system, a deserted wife has the right to bring an action against her husband for the restoration of conjugal rights. He is ordered to return to his wife, and in the event of his failure to do so, the wife is awarded alimony as in divorce. If the case goes by default, his property, if he has any, can be attached. Actions of this kind are confined exclusively to people of the higher classes and have often been used as a form of blackmail. For example, if a man has been unfortunate enough to marry a woman of bad character and through her evil conduct has been obliged to leave her, the woman can bring suit and obtain alimony. Such actions are usually based on mercenary motives and are brought with the full knowledge that the defendant would be unlikely to obey the order of the court to cohabit with the woman whom he has left.

As in all countries where restrictions on divorce exist,

a vast amount of wretchedness and immorality existing to-day in England is the direct result of such restrictions. Writing on this subject not long ago, Mr. A. Chichele Plowden, one of the principal London magistrates, said: "Matrimonial troubles lie thick in England. Unless relieved far more extensively than at present they must continue to be a fruitful source of human vice and misery. 'The sanctity of the marriage tie,' that well-oiled phrase, which is all the church has to offer by way of consolation to afflicted wives and husbands, becomes less and less satisfying as education spreads and people learn to think for themselves."

Owing to the present restrictions on divorce many collusive actions are arranged in England and this in spite of the efforts of the King's Proctor, an official whose duty it is to investigate divorce suits and prevent the trial of those in which there is collusion. As in New York State, English couples anxious to separate obtain their freedom by the husband's committing adultery; but in addition to this the English husband must also strike his wife in the presence of witnesses in order to provide the further ground of cruelty necessary for obtaining an absolute decree. Thus we find in England as in New York the same conditions of blackmail, perjury and immorality resulting directly from severe restrictions on divorce.

The evils caused by these restrictions in England are not confined to any particular class, but exist among the highest as well as among the lowest. As to the effect of the present law in the higher circles of society a well-known English novelist recently wrote: "Owing to our

inadequate divorce law many English couples become carelessly flagrant. They almost flaunt their unhappiness and intrigues. Husbands and wives unhappily wed become independent in their behavior. The husband has his affinity, the wife her paramour. This complacence is carried so far that with the soul-mates found after marriage they sometimes join together as a quartette."

Among the lower classes in England the difficulty of obtaining divorce and the formalities incidental to marriage, despite the comparatively low cost of the latter, have helped to bring about some amazing conditions. In a recent work, "*Marriage-making and Breaking*," the author presents an awful picture of slum life in some of the large English cities. "In the east end of London and in certain quarters of our large towns," he says, "thousands of men and women live together promiscuously. Persons who have studied the life of the casual laborer have pointed out that he picks up a temporary partner without the slightest regard to any permanent relation, that he parts from her on the slightest cause of difference, and that when such occasion arises the woman leaves him with equanimity to find someone else who will for a time provide shelter and food. Among such classes the only value the woman appears to attach to marriage is the hold—a very frail one it proves in the majority of cases—that it offers in the shape of legal obligations on the husband."

One of the witnesses before the Divorce Commission said much the same thing and declared that the parties to these irregular unions seemed to entertain no sense of wrong-doing in regard to them. Such concubinage, he

said, seemed rather to be regarded as a matter of necessity among that class of people more than in any other—the necessity of a mate of the opposite sex. Another witness said that among the lower classes in Sheffield conditions were awful. Misconduct was common in the squalid districts; married men in some cases lived with married women other than their wives; married women left their husbands in order to consort with single men and even the exchange of wives was not uncommon.

Owing to the impossibility of poor people obtaining divorces in England relief is sought in separation orders granted by police magistrates, over sixty thousand of such orders having been issued last year.

Infidelity being practically the sole cause for divorce in England, evidence more or less sensational has usually to be presented at the trial of divorce suits, and reports of important cases are given a large amount of space in the newspapers. The English Sunday newspapers, in fact, owe much of their large circulation to their full reports of unsavory divorce cases, although it is only just to add that the best public opinion in England, as in this country, is opposed to the publication of such news.

No one has pictured the horrors of English divorce more forcefully than Arnold Bennett. In his story, "Whom God Hath Joined," he deals with the difficulty of obtaining divorce in England, the obstacles which are placed in its way, and the publicity which is given to the most indecent testimony. Even in Reno, whenever there is anything approaching indecency in the evidence, the judge orders the courtroom to be cleared and the case is heard privately. The local newspapers there do not

publish reports of divorce cases. This is also a feature of French divorce proceedings, and the newspapers in that country are forbidden to publish any evidence given in a divorce case.

In Mr. Bennett's story a young girl is called to the stand in the London Divorce Court as the principal witness against her father. She is shocked to find that she will have to relate how she saw a French governess go into her father's room during her mother's absence. The courtroom is crowded. From this point the story proceeds:

"Anunciata gazed blankly and stupidly around her, with smarting eyes and a lump in her throat. The aged barrister addressed her a second time. Her lips did not move. The judge coughed slightly and turned a little sideways on his chair so as to look at her; and she looked at him expectantly.

"'You must answer,' said the judge in a kind, firm, avuncular voice. Her eyes continued to appeal to him.

"'You must answer,' he repeated.

"Something broke within her.

"'What?' she asked him, in a simple, very quiet, colloquial tone, 'here? Before all these people?'

"'Yes,' said the judge.

"'Oh, no,' she cried, 'I can't. I didn't know,' and in the unreflecting madness of her torment she sprang down the steps from the witness box like a wild deer that terror has made desperate and dangerous."

The case was discontinued and there was no divorce.

In another part of the same story the author describes one of the characters, Lawrence Ridway, discussing, with his lawyers, a divorce action against his erring wife.

"How long is it since you were on good terms with her?" asked the barrister.

"‘On good terms?’

“‘Yes—when did you last sleep together?’ He spoke with impatience. ‘Now, my dear sir, don’t get angry. That’s nothing to what the counsel on the other side will ask you.’

“‘It was some years ago,’ Lawrence replied. He abandoned himself to the prospect of utter humiliation.

“‘You never refused intercourse?’

“‘No.’

“‘I must ask you these questions. You have to remember, my young friend, that in the English matrimonial court the odds are always on the respondent. Divorces are not given away in this country. They are dragged out of an unwilling court by main force; and then when you have got your bone there’s no knowing if the King’s Proctor won’t stroll up and take it away.’”

Bernard Shaw has severely condemned the practice of publishing reports of divorce cases of this description. He says:

“There should be no publication of the grounds on which a divorce is sought or granted; and as this would abolish the only means the public now has of ascertaining that every possible effort has been made to keep the couple united against their wills, such privacy will only be tolerated when we at last admit that the sole and sufficient reason why people should be granted a divorce is that they want one. Then there will be no more reports of divorce cases, no more letters read in court with an indelicacy that makes every sensitive person shudder and recoil as from a profanation, no more washing of household linen, dirty or clean, in public. We must learn in these matters to mind our own business and not impose our individual notions of propriety on one another, even if it carries us to the length of openly admitting what we are now compelled to assume silently, that every human being has a right to sexual experience and that the law is concerned only with parentage, which is now a separate matter.”

The present English divorce law, as we have seen, recognizes a double standard of morality for men and women. Apart from all considerations of divorce, this question of a double standard has been much discussed by writers of the past and present time, Bernard Shaw, for instance, having written extensively on this subject. It is interesting to note that at the close of the eighteenth century Johnson and Boswell discussed this topic in a plain-spoken style that has a distinctly Shavian flavor, although Johnson's point of view differs somewhat from Mr. Shaw's.

In his "Life of Johnson" Boswell relates that on one occasion he asked the great philosopher whether he thought that the infidelities of men and women should be regarded as equally serious. To this Johnson made the following characteristic reply: "Confusion of progeny constitutes the essence of the crime; and therefore the woman who breaks her marriage vows is much more criminal than a man who does it. A man, to be sure, is criminal in the sight of God; but he does not do his wife a very material injury if he does not insult her; if, for instance, from mere wantonness he steals privately to her chambermaid. Sir, a wife ought not to greatly resent this. I would not receive home a daughter who had run away from her husband on that account."

Boswell adds: "Here it may be questioned whether Johnson was entirely in the right. I suppose it will not be controverted that the difference in the degree of criminality is supreme on account of the consequences; but still it may be maintained that independent of moral obligation infidelity is by no means a light offense in a

husband, because it may hurt a delicate attachment in which a mutual constancy is implied, with such refined sentiments as Massinger has exhibited in his play, ‘*The Picture*.’ Johnson probably, at another time, would have admitted this thing; and let it be kept in mind that he was very careful not to give any encouragement to irregular conduct.”

One of the foremost Englishwomen to protest against this double standard of morality was Mrs. Caroline Sheridan Norton, a well-known writer of the Victorian period, and author of that once famous poem, “*Bingen on the Rhine*,” which has figured so much in American school readers. A granddaughter of the Irish dramatist, Richard Brinsley Sheridan, she was unhappily married and separated. Her husband brought an action against Lord Melbourne, then Prime Minister, for alienating her affections, but lost his case. By the provisions of the English law, at that time, Mrs. Norton was denied the privilege of seeing her children. Single handed, she fought against this law and ultimately an act was passed by Parliament, permitting a mother who was denied access to her children to have a court of justice decide when she could see them. For the first time in English law, the natural rights of a mother, as separate from those of the wife, were recognized. The despotism of the father was finally destroyed. Following this, Mrs. Norton wrote vigorously in favor of divorce law reform, and eventually helped to bring about the enactment of the present English statute in 1858.

The virulence of the present women’s suffrage campaign in England is largely due to woman’s inferiority

under the present laws, and especially under the divorce law with its maintenance of the double standard of morality. The suffragists are determined to abolish this unjust discrimination in favor of male offenders. Owing to the fact that women of all religious beliefs are taking part in the suffrage movement, the leaders are naturally obliged to refrain from expressing too radical an opinion on other phases of the divorce question, and this may possibly account for the somewhat conservative views which were expressed by Mrs. Emmeline Pankhurst, the leader of the English suffrage cause, when she discussed divorce law reform recently. "There are such a variety of opinions on divorce," she said, "that we have not attempted to make any suggestions as to how the present law should be amended. We are satisfied to leave such matters to those who by training and experience are best qualified to deal with them. We do say this, however, that when the proposed new divorce law is presented to Parliament it must place the sexes on absolute equality. That is the great point, and it is the only point upon which we are making a decided stand."

The effect of the suffrage movement has not only been apparent in the divorce law reform proposals, but also in the demand that is being made for some reform of the marriage service that will make it conform to modern ideas. Many advanced Englishwomen strongly object to the notion of being given to any man, and they also protest against certain phrases in the service that seem to convey the idea of woman's subjection to man. It was not long ago that at a fashionable wedding in England at which the Archbishop of Canterbury officiated, the bride refused

to utter the word "obey." The question was raised afterwards, whether her omission of the word would render the ceremony invalid. The incident attracted much notice and was the subject of a great deal of discussion in this country. A number of prominent women who expressed their views praised the bride for her conduct and insisted that the promise to obey had no place in a modern marriage ceremony.

The study of eugenics in England and popular interest in the subject have increased greatly of late, and it was largely owing to this fact that a bill was introduced in the House of Commons recently, designed to prevent the marriage of the unfit. If this becomes law, marriage will be denied to habitual drunkards, persons mentally deficient, moral imbeciles and the mentally infirm and physically decrepit. The London Eugenics Society has just succeeded in getting a bill through Parliament placing the control of the feeble-minded in the hands of the Government. Under this law, boys and girls of the poorer classes who show signs of mental degeneracy are segregated. The boys, under Government supervision and of course at the expense of the Government, are placed in farm colonies; the girls are given work that suits their condition and sex, such as laundrying. This segregation of the feeble-minded is not intended to last for life, nor is there anything like imprisonment about it. It is practically a form of technical education having for its great object the prevention of these unfortunates from perpetuating their kind. At the end of every few years an expert examination will be made of each feeble-minded individual in the control of the Government, and if any should have

been found to have developed the normal degree of intelligence and is adjudged mentally and morally responsible, he or she will be set free. The importance of this eugenic movement becomes apparent when it is added that investigation has shown that the feeble-minded have more than forty per cent more children than the wholly sane. The birth of unfit offspring which may result thus constitutes a serious menace to society.

Another branch of work which the Eugenics Society has taken up is that of popular education. It is hoped that before long some method of introducing a primary course of eugenics in all the English public schools will be devised, and that this wholesome instruction will have a beneficial influence on future family life. This idea has already been adopted in Manchester, and lessons in eugenics are now given in the public schools of that city.

The wise laws enacted by certain States in this country, which are designed to prevent the marriage of the unfit, have excited great interest in England. While the bill now before Parliament is strongly approved, there is a general feeling that its provisions should be made still wider. Among most people who have studied this subject there is a belief that no marriage should be permitted without a medical certificate attesting the mental and physical fitness of both parties. Under the present careless system, members of families in which insanity is known to exist, in which drunkenness has been hereditary for generations, in which consumption or cancer have been scourges, are free to marry as they please. This is also true of epileptics. Grave social conditions and a

certain degree of national deterioration have been the inevitable result.

In Great Britain, as in this country, there is some difference of opinion on divorce among the various churches, but the Church of England, like the American Episcopal Church, contains far more of the ultra-conservative than the liberal element. This fact has had a serious effect in retarding divorce legislation. Some of the high church clergymen have not only declined to marry divorced persons, but have even declined to make an exception in favor of those who have been innocent parties in divorce proceedings. One of the clergy, the Rev. Mr. Black, formerly appeared at Church of England weddings in which one of the parties had been divorced, in order to protest publicly against the ceremony.

In 1895, at the wedding of Sir Theodore Brinkman, who, having been divorced from his wife, married Miss Mary Linton a few months later, Mr. Black appeared and caused a remarkable scene. When the officiating clergyman demanded whether there was any just impediment to the union, Mr. Black and the Duke of Newcastle—the latter a staunch supporter of the high church party—stood up in one of the galleries in which they had remained unobserved. Mr. Black demanded that the marriage should not take place, on the ground that Sir Theodore was a divorced man. The bride fainted, the duke and his reverend associate were compelled to leave the church. By reason of his prerogative as a peer, the former escaped prosecution, but Mr. Black was subsequently fined in a police court for creating a disturbance and for "brawling."

While the law of England authorizes divorce, and the

Church of England is a state church, and while, moreover, there is nothing in the law of England prohibiting the remarriage of divorced persons, yet the episcopacy and the clergy of the established church are bitterly opposed to marriages of divorced people, and cannot be compelled to perform the ceremony or even to lend their churches for the purpose. In fact, it was only recently that a contest took place between the Bishop of London and the Lawyers' Chancellor of his diocese, owing to the latter's persistence in issuing marriage licenses to divorced people against the protests and in defiance of the commands of the Bishop.

In England, as in most other countries, the attitude of society towards divorcees has undergone a great change in comparatively recent years. When Queen Victoria came to the throne she continued, with increased severity, the rule barring divorced women from presentation at court. This rule, as a recent writer has explained, was inaugurated by Queen Charlotte, consort of George III, and maintained by Queen Adelaide, who, despite all the influences brought to bear upon her, absolutely excluded from court the celebrated Lady Holland. To Queen Victoria it made no difference whether the woman had been the petitioner or the respondent in the suit. The question of guilt or innocence did not enter. The mere fact that the fair one's name had figured in a divorce case was sufficient to make her ineligible for presentation. If she had been presented already, her status was officially cancelled.

While the Prince Consort was alive these regulations were maintained with the utmost severity, although his

own mother, the fascinating Duchess Louise of Saxe-Coburg Gotha was herself a divorcee, having eloped with her chamberlain, Count Alexander Polzit, whom she married after her divorce from the duke. The rules were continued for more than two decades after the Prince Consort's death with undiminished strictness, and English society followed the sovereign's lead. If it did not actually boycott women who had obtained divorces it made them feel they were not welcome.

A great change of feeling took place in 1883, following the divorce of the Marquis of Blandford, afterwards the eighth Duke of Marlborough. The marquis had treated his wife shamefully, having beaten and kicked her when on the eve of motherhood. When it was shown in court that she had pardoned her husband repeatedly until compelled by her relatives to seek the protection of the law, the English social world, headed by the Princess of Wales, arose *en masse* in her behalf. Queen Victoria gave in at last to public opinion and sent for Lady Blandford, whom she had known since childhood. She assured the wronged woman of her unaltered regard and invited her to court. This was the beginning of a new era in the attitude of British royalty towards divorce.

Not long afterwards there was a divorce in the Queen's own family, when her granddaughter, Princess Louise of Schleswig-Holstein, to whom she was greatly attached, obtained a divorce after repeatedly condoning her husband's misbehavior. From that time she lived in England, a favorite companion of the aged queen.

Soon after Edward VII succeeded to the throne another of the granddaughters of Queen Victoria, and the

king's niece, Princess Victoria Melita of Great Britain and Saxe-Coburg Gotha, obtained a divorce from her husband. Subsequently she married the Grand Duke Cyril of Russia. The fact that two of his nieces had been divorced made it impossible for King Edward to continue Queen Victoria's policy of excluding divorcees from court. At the last state ball at Buckingham Palace before the King's death, it was remarked that over a score of women present were divorcees, eight of them being of American birth. King Edward always took the liberal view that, provided there were no scandalous circumstances connected with a divorce it was not to be regarded as preventing a presentation at his court.

Queen Mary, on her husband's accession to the throne, caused it to be known that she intended to revive the rules and regulations of Queen Victoria. She even went a step further, it is said, and intimated that the men concerned in divorce cases, as respondents or correspondents, would be regarded with disfavor in the highest quarters.

Queen Victoria never visited her displeasure on the men implicated in divorce cases, save in the solitary instance of Sir Charles Dilke. Indeed, several of her most famous and trusted ministers were mixed up in all sorts of divorce cases, without ever forfeiting either their office or her good will.

Both King George and Queen Mary, however, found that it was quite impossible to put their avowed intentions into practice. They could not exclude divorced women from their court unless they barred therefrom the king's own first cousin, the Grand Duchess Cyril of Russia and Princess Louise of Schleswig-Holstein, as well as a host

of other royal and imperial foreign personages, more or less closely related to them by ties of blood.

The English divorce law, it should be explained, is in force in England and Wales. Scotland has its own divorce law which permits divorce for adultery and for four years' desertion against the will of the party deserted. In the Irish courts a judicial separation or limited divorce can only be obtained on the grounds of adultery, cruelty or unnatural practices. In order to obtain an absolute divorce a bill has to be introduced in the House of Lords. In such actions a wife must prove her husband's adultery coupled with cruelty, and, if a husband sues, he must prove his wife's adultery, and, if possible, make the paramour a party by instituting proceedings against him in the Irish courts.

In the British colonies the divorce laws are, as a rule, based on the present English law with a few modifications, but in Australia, New Zealand and South Africa there has been some departure from the severity of the English code. In these countries desertion, habitual drunkenness, imprisonment and repeated cruelty constitute grounds for divorce, in addition to the usual statutory charge of adultery.

Canada shares with Ireland the distinction of having no general law permitting a judicial decree of divorce. Four of the nine provinces, however, have their individual laws of divorce and divorce courts: British Columbia, New Brunswick, Nova Scotia and Prince Edward Island. Of the eight millions of people in Canada six millions have no possibility of divorce except by special act of the Dominion Parliament, and this can only be granted for

adultery. Divorce bills have to be introduced first in the Senate, where there is a committee to deal with them.

The Canadian courts hold that marriage celebrated in Canada by Canadians is dissoluble only by death or the decree of Parliament or Canadian courts of jurisprudence. This rule has invited severe criticism, and it cannot be maintained much longer by such tribunals as the courts of Canada. Even if Canadians obtained divorces in London or New York such divorces would not be recognized in the Dominion.

Canada has a very low divorce rate. From 1887 to 1906 only 431 divorces were granted there. The American figures for the same period were 274,341. It is of interest to add, however, that during twenty years 23,437 divorces were granted in the United States to foreigners, 8,645 of these being granted to Canadians, or 37 per cent of the total number granted to foreigners. Englishmen were granted 2,966, or nearly 13 per cent. In other words, a quarter as many Englishmen crossed the Atlantic and obtained divorce as went from various parts of England to the divorce court in London.

XII

THE WORLDWIDE UNREST

SOCIAL CHANGES IN OTHER COUNTRIES; THEIR EFFECT ON
MARRIAGE CONDITIONS

WHILE English-speaking countries, in recent years, have been grappling with the problems of marriage and divorce, they have not been alone in this task; for the same subjects have engaged serious attention in other parts of the world, and especially among the nations of continental Europe. In these countries the increase of divorce has excited much discussion, and the various aspects of marriage have become favorite topics for dramatists and writers of fiction.

In most countries there has been a falling off in the marriage rate, with a tendency towards later marriages, while the proportion of childless unions has steadily increased. And not only is the adaptation to new conditions of life proceeding apace, but large bodies of men and women are being rapidly modified as regards their social ideals. New conceptions of marriage are even finding their way into the lower strata of society, and in places where it would be least expected one is surprised to discover the new spirit of womanhood.

The increasing demand for a higher standard of living, and the decline of frugality, which have been cited as

prolific causes of American divorce, have also had their effect on the European family. In France it has been asserted that the old-fashioned family is dying out, and in another generation or two it will have ceased to exist. The chief causes for its failure, which may involve the downfall of the nation, can be traced to the fact that married couples nowadays have found that if they are childless they can have more to spend on amusements and luxuries. As in other countries, investigation in France has shown that it is among the poorest people that the largest families are to be found, while an ascent in the social scale shows a corresponding decrease of children, the rule being, the larger the income the smaller the family.

For a variety of reasons, France presents one of the most conspicuous examples of the increase of divorce which, in recent years, has been evident in most European countries. In 1905 the number of French divorces had increased to 26 per hundred thousand population—at that time the third highest divorce rate in Europe, being exceeded only by the rates of Saxony and Switzerland.

Divorce was introduced into France by the Revolution, and was afterwards modified by the Code Napoleon in 1803. It was under this code that the Emperor obtained his divorce from Josephine and furnished a glaring example of the evasion of his own law. The Code Napoleon permitted divorce for adultery, cruelty and sentence to degrading punishment, and also upon the mutual consent of both parties. In 1816, when the Roman Catholic religion again became the state religion, absolute divorce was abolished, and judicial separations alone were per-

mitted. It was not until 1884 that a divorce law was enacted with adultery as the sole cause for an absolute decree. This law was subsequently amended and additional grounds were recognized. These comprise adultery, acts of violence or cruelty, including abusive language and certain serious insults, disease, habitual drunkenness, premarital unchastity of the wife, imprisonment for crime exceeding five years, and three years' desertion.

During the ten years preceding the passage of the law of 1884 the separations averaged about 2,500 a year, but in the ten years following its enactment, ending with 1894, the annual number of divorces and separations, combined, ranged from 4,478 to 9,703. During the next ten years there was a further advance until in 1904 the number recorded was 13,140. Since then the increase has been rapid, 6,374 decrees having been granted in the first half of 1911, or nearly two thousand more in six months than there had been in the whole of 1884.

According to the French court records, in 35.2 per cent of the divorce cases which were decided between 1897 and 1905 the marriages dissolved had lasted only five years. It was also shown that in Paris, in 1905, every seventeenth marriage was ending in divorce. As to remarriages following divorce, it was found that between 1891 and 1905 no less than 8,921 men remarried, while the divorced women who remarried were 8,576 in number, or 345 less. Not only did the divorced men remarry, but they remarried more promptly than the women—39.2 per cent remarrying in less than two years.

In most of the actions for divorce or separation in France some cause is alleged which brings the case under

that section of the code which allows divorce or separation for violence, cruelty or dishonorable treatment. According to the French law, "violence, dishonorable treatment, and serious insults of one towards another" constitute grounds for absolute divorce, and it may be added that the flexibility of French law in defining these causes corresponds to some extent to the wide latitude given to the definition of "cruelty" by the courts of our Western States.

During the twenty years from 1888 to 1908, it is a significant fact that the working population of France more than doubled the number of its divorces. The French poorer classes, it is to be noted, have the privilege of suing for divorce *in forma pauperis*, and this undoubtedly accounts for the increase. For the middle classes divorce costs about \$500. This increase of divorce seems astonishing in view of the fact that the population of France is more nearly stationary than that of any other country.

The problem of childless marriages, already referred to, is causing much concern in France, and in the hope of increasing the birth rate the Government has offered a bonus to couples who rear a certain number of children. The French Government is keenly alive to the importance of the subject, and at the beginning of 1914 appointed a commission to study it in the most comprehensive and thorough manner.

Among other phases of the decline in population, it was arranged that the commission should investigate the results of the French marriage and divorce laws, the effect of army organization and conscription on the birth

rate, infanticide and kindred evils, infantile mortality, intemperance, tuberculosis, together with questions of assistance to mothers, and the proper education of the sexes; also the best means for encouraging large families, and how to help those which have become too large for the financial means of the parents. The work of the commission will be of value to this country as well as to France. It will serve to throw light on the causes of decreasing families among our older stock, and on other evils that may threaten us. For what has been going on in France in a marked degree has evidently begun in other countries; and we have yet to gain scientific knowledge of the treatment that the modern family needs.

This phase of the marriage problem is of peculiar interest. While, as already explained, it has been attributed partly to the growth of luxury, it also seems to indicate that wherever women have a high degree of independence and intelligence the large families of former days are much less in evidence. Under such conditions women are more likely to assert their rights, and this leads to a greater possibility of divorce. The business ability of women among the great shopkeeping class in France has always been remarked, the wife, in many instances, taking a more active part than the husband in the management of the business. This may partly explain the comparatively limited spread of the suffrage movement among Frenchwomen who, to a certain extent, are already economically independent.

In discussing the increasing number of childless unions and other aspects of the marriage problem with which France is confronted, Paul Marguerite, a well-known

French writer on social topics, has made a plea for still easier divorce. In support of this idea he says:

"If anything is to be saved out of the present wreck of marriage, drastic legal remedies will be necessary. Divorce by mutual consent under the present law is not difficult; but when a sound, healthy person finds himself married to an alcoholic or lunatic under our code the two parties are as closely bound to each other as when in olden times a living person was chained as a punishment to a decaying corpse. Following this will have to go the old distinction between legitimate and illegitimate children. (An opinion that has been emphasized by Ellen Key.) All children should be legitimate in the eyes of the law.

"When these changes are brought about the family as we know it is bound to fall to pieces, and domestic life in future generations will be less pharisaical and hidebound, and instead of dead façades will show wide windows and free spaces of air and sunlight. When divorce is easier remarriage will be more frequent, while more numerous and stronger children will spring from these unions."

Germany being a country of more conservatism than France, the divorce rate there is naturally lower. In recent years, however, the astonishing fact has been revealed that while the German marriage rate has remained nearly stationary, the divorce rate has taken a sudden upward turn. Various causes have contributed to this increase. As in most countries where education has advanced, the women of Germany have shown an increasing determination to get their just rights and privileges; and although the wave of progress will probably advance more slowly among the unexcitable Teutons, nevertheless there are signs already that among certain classes the typical *hausfrau*, rearing a large brood of children, and

passing her life in domestic seclusion, will eventually disappear.

In recent years the works of Ellen Key have been read extensively among German women of the higher classes, and have undoubtedly exerted some influence on their views of marriage. To this fact may perhaps be partly due the increasing and rapid growth of divorce as shown by the government statistics. From these it appears that while for the ten years ending with 1893 German divorces increased at the rate of only one hundred a year, yet from 1893 to 1899 the number amounted to 2,739, or an average of 456.5 a year, which was practically four and a half times the rate of increase in the preceding decade.

To understand the operation of the German divorce law, it must be borne in mind that the German Empire consists of thirty-six political States, and with the exception of Alsace-Lorraine all are sovereign States similar to those of the American union. Not only is the legislative power and the central authority of the German Empire exclusive, however, on certain imperial matters, but its acts take precedence in such domestic concerns as marriage and divorce. The law of divorce is set forth in the German Civil Code, which was enacted in 1900, and under this code the grounds for divorce are as follows: adultery, attempt to kill, desertion one year, gross immorality or breaches of marital duty, and insanity. In a divorce granted for adultery the guilty person can be punished by six months' imprisonment on request.

This uniform divorce law, which supplanted the local statutes formerly in force, checked the increase in divorce

for two years, and then its growth was resumed. In 1900, for example, the rate for the whole German Empire was 14 divorces per hundred thousand inhabitants, for Prussia 14, Saxony 28, and Bavaria 7. A marked increase was shown in 1905, when the rate for the Empire had grown to 19, for Prussia 19, Saxony 30 and Bavaria 11.

In Germany, as elsewhere, the divorce rate varies greatly in different parts of the country, being higher in the more enterprising, progressive districts. For instance, in the State of Hamburg, which contains the most important port of the Empire, there was one divorce to every thirteen marriages in the period from 1900 to 1906, which was higher than the average for the United States; while in Bavaria, which has the smallest city population of any German State, there was only one divorce to each eighty-nine marriages. That is to say, divorce in 1906 was over six times more frequent in Hamburg than in Bavaria.

The Imperial German Divorce Law has not had much effect in those States which formerly had equally liberal divorce laws, the increase in Prussia, Saxony, Baden and Alsace-Lorraine having been very slight. In Bavaria, however, where the bulk of the population is Roman Catholic, and where previous to 1900 divorces were granted only for adultery and kindred offences, a large increase has taken place since the imperial law was enacted. The same is true of Wurttemberg and Hesse.

It is a surprising fact that the divorce rate was found to have increased more rapidly in Catholic districts than in the Protestant. In Catholic Bavaria, for example, in the ten years from 1887 to 1896 there was one divorce to each 140 marriages, while between 1896 and 1905 the

ratio had changed to one divorce to each 89 marriages. On the other hand, in Protestant Saxony, the number of marriages to one divorce fell only from 33 to 29 between 1896 and 1905. Divorces granted to Catholics, it should be explained, are of the limited character, being simply separations from bed and board with no right to remarry.

These facts seem to furnish additional proof that liberal divorce laws so far from increasing divorce actually seem to check its growth. The influence of the imperial law in reducing divorce is brought out clearly by the fact that while in 1899 there were in the administrative district of Berlin 452 divorces to each 100,000 existing marriages, in 1900 the number dropped to 305, and showed a further falling off in 1901 to 273.

It is noticeable that in recent years adultery has been the leading cause in German divorce cases. In those parts of the Empire in which the Prussian general statutes were in force, prior to the enactment of the present divorce law, more than one fourth of the divorce actions were brought on the ground of mutual consent and unconquerable aversion. This provision was dropped when the present code was devised, and since then there has been a marked increase of divorces brought on the ground of adultery. It may be added that in nearly three-fifths of the divorce cases from 1887 to 1906 the duration of marriage was less than ten years, and in one fourth the marriage lasted less than five years. In more than half the cases then there were no children; but of late the percentage of cases in which children are involved has shown a considerable increase.

As already observed, the women's movement in Ger-

many is likely to advance more slowly than in some other countries, and this may be attributed in part to the national ideal of woman's position. According to German ideas, the husband is invariably the master of the situation, although this is more through custom than by actual legal right. In commenting on this a recent writer has said:

"While the laws protect the German wife's fortune and her other rights, the husband is the ruler of the household, and she is contented that it should be so. She has been brought up to regard the man as the being who must and should have the best of everything, and obedience to his wishes and requirements is too deeply ingrained in her for any resistance. She contents herself—perhaps wisely—with a subtle, underground influence and the respect with which she is treated by her husband and children. For the average German does not abuse his power of authority in his home; and whatever else he forgets, he never forgets that his wife is the mother of his children.

"On the whole, therefore, the German family seems very peaceful and united. Divorce is easy to obtain, but is looked upon as the highest disgrace, and, guilty or innocent, the mere fact that he has been a party in a divorce case is sufficient to ruin a man's professional career. An officer, for instance, who has been divorced, or who has divorced his wife, is practically compelled to resign."

Yet in spite of these impressions, statistics show that divorce is increasing rapidly in Germany, and according to present indications the social stigma which has hitherto attached to divorced persons is gradually disappearing. It is this change in public opinion that has forced the Kaiser's court to abandon its former prejudice against divorce, for, like most other European countries, Germany has made its contribution to the legion of titled divorcees.

One royal divorcee who was received as such, and as a reigning sovereign, by the late Queen Victoria of England, by King Humbert and Queen Margherita of Italy, by the late King Oscar of Sweden and by his extremely religious wife, was Queen Natalie of Servia, daughter of the Russian Commissary, Colonel Kecko. There was only one court where Natalie was not received, namely, Petrograd, owing to the bitter resentment which was excited by her conversion to the Roman Catholic faith after the death of the unsavory King Milan. But this slight at Petrograd was counterbalanced, to some extent, by the royal welcome she received at the Vatican.

In referring to this incident, a political writer has pointed out that one royal divorcee who has been universally ostracized is the ex-Archduchess Louise of Austria, following her divorce by the present King of Saxony and her marriage to Signor Toselli, the professional pianist. The book of memoirs which she issued not long ago is of such a nature as to alienate her still further from her relatives. Frederick Augustus of Saxony, whose subjects are mostly Lutherans, is himself a member of the Roman Catholic Church. Although he was granted a divorce by the civil courts, the church does not recognize the decree, and consequently his marriage ties remain unsevered in the eyes of his co-religionists, although his former consort has married again. Several attempts have been made to induce the Vatican to grant an ecclesiastical annulment of the King's marriage to Louise. But in spite of all the influence exerted in his behalf, Pius X and the present Pope refused to accede to this.

While the Vatican has declined to grant relief in

the case of the King of Saxony, there have been instances in which it has annulled marriages, though very few in number. Women whose marriages have been thus cancelled by the church are received at German imperial functions.

In Russia, owing to the firm opposition of the Greek Church, divorce was condemned formerly, both by the court and society. Moreover, it was extremely difficult to obtain, as it was granted only on grounds which would suffice to secure a decree of annulment from English and American tribunals, or else for infidelity. But in the latter case the legal conditions were exacting, and the cost of a suit so expensive that demands for the dissolution of marriage ties were few and far between. Confession of infidelity and circumstantial evidence were not considered adequate legal proofs. Witnesses were indispensable. These, of course, could be bought; and the result was that perjury played no small part in the securing of divorces. Perjury has always been involved with blackmail. Therefore, divorce in Russia was so expensive as to be beyond the means of all except the very rich. Even the mere preliminary expenses reached ten thousand roubles (\$5,000) or more, while the Procurator-General of the Holy Synod and the Czar himself had to pass upon the matter in final resort.

At the present day the situation has changed entirely. Divorces have become frequent in Russian society, and in spite of the objections of the Emperor and of his Russian-born but English-bred consort, the court has had to open its doors to divorcees. Thus the wife of General Soukhomlinov, the Minister of War, one of the most popular

figures at the court of Petrograd and in the great world on the banks of the Neva, was first married to M. de Butewich with whom her union was legally and ecclesiastically severed in 1909.

The Countess Witte, wife of the former Premier, who represented Russia at the peace conference at Portsmouth, N. H., in 1906, was also a divorcee, and while the Count was living she was received at court. Moreover, there are a number of divorcees in the imperial family itself, something wholly unknown until the present reign.

Although conditions in Russia have become somewhat lax, the civil courts are still without jurisdiction over matters of marriage and divorce where members of the Greek Church are concerned. In such cases, all matters relating thereto and connected therewith are reserved to the ecclesiastical authorities, who exercise both temporal and ecclesiastical power. The recognized grounds for divorce are: adultery, bigamy, absence without news for five years, condemnation and loss of civil rights, and banishment to Siberia with loss of special rights. Exceptions are made in regard to Roman Catholics, Jews and Protestants, who can obtain separations or divorces in the civil courts. Protestants in Russia have additional grounds for divorce, including refusal to live together and two years' desertion.

As the divorcing of members of the Greek Church is wholly within the province of the church authorities, any abuses or corrupt practices which exist must be attributed to the state church and its ecclesiastical law and procedure. The Russian Government requires stamp duties upon divorce documents, the advertisements of divorce

lawyers are not objected to by the church papers, the various church consistories gain a part of their revenue from divorce proceedings, and their officials frequently engage in divorce litigation as experts familiar with the routine of the courts.

Most divorces in Russia are obtained for desertion and "continued absence without news." Oftentimes a divorce is obtained by a wife in one part of the Empire, while a decree is granted to the husband in another district for the same cause. Usually the only notice given is by advertisements published in the church papers, which have a limited circulation, and not in the newspapers. Most of the peasants and persons of the mixed classes, even if they know how to read and write, have no idea of how to draw a petition in divorce, and have no knowledge of divorce procedure. Consequently, the Russian lawyer who makes a specialty of divorce is much in evidence, and he does not hesitate to advertise himself in a way that would put to shame the most daring of the divorce lawyers in the United States. The following is a specimen advertisement taken from a whole column of similar advertisements in one of the Russian church papers:

DIVORCE from 100 roubles up (about \$52) in all consistories. Payment at the end of proceedings. For poor persons consultation free. Information in separation cases. All divorce matters speedily and quietly arranged.

The latest statistics seem to indicate that divorce in Russia is increasing rapidly among adherents of the orthodox church, while it has remained practically constant in the two Protestant denominations. More than three-fifths of the divorces granted among the orthodox, in

recent years, were on the ground of disappearance. "Exile and civil death" is the only other cause for which significant figures are shown for the Empire as a whole, although in the diocese of Petrograd this is relatively unimportant, while adultery is the leading cause. In Finland there has also been a marked increase in the divorce rate. In the last nine years for which statistics were obtainable marriages decreased 6.4 per cent while divorces increased 41.7 per cent. The principal cause of divorce was desertion, this alone accounting for over one-half of the divorces granted.

In Poland the tendency to resort to divorce or separation as a relief from matrimonial troubles has shown a relatively slow increase. The phenomenally high divorce rate among the Jews is significant, however, and is explained by the fact that divorce by mutual consent is permitted by Jewish law.

A peculiar feature of the Russian marriage laws is the fact that not only is parental consent necessary in all cases, but if the prospective bridegroom has insulted his parents or grandparents their pardon must be obtained to make the marriage legal. It may be added that the rule of securing parental consent when the parties are minors obtains in nearly every country, and in some instances the consent of grandparents is also required.

As a commentary on marriage and divorce and the effect of the women's movement, the Countess Vera Antonovna Branitzkaya, in her recent memoirs, quotes a conversation that she had with the Czarina on this subject.

"'Human history,' said the Czarina, 'teaches us a good lesson. Take, for instance, the Orient and Russia, where

women have remained more or less in their feminine atmosphere, and then take the western countries like England, Scandinavia and America, where women are emancipated. The result is that the sexual relations seem prosaic and the life feminine wherever the women are equal with the men. King Edward of England once told me that he felt an increasing effeminacy in English literature and art. I am sure the equality of women has that influence. If we would make women positive and men negative it would mean degeneracy. The more I think about the matter, the more I become opposed to the suffragette movement. It is wrong for humanity to go against natural law. Man should develop his intellect and woman her emotions. Man should remain the symbolic head of the nation, woman that of the family.'

"The Czarina's arguments were so new to me," says Countess Branitzkaya, "that I was unable to make any comment. Having paused a few minutes she went on":

"Don't you feel that the tendency of the modern suffrage movement is to make family life shallow and divorce a social necessity? Marriage ceases to be a sacred romance of sexes. It already has become a simple business proposition. People marry because of money, career or social reasons. Love and romance nowadays are rare motives toward matrimony. If people would marry because they love each other romantically, there would be no divorce, an institution which makes the sexual relations profane. When people marry at the present day many of them already discuss the possibility of divorce."

The foregoing remarks apply, of course, to Russian high society. Among the lower middle classes in Russia,

where separation and divorce are both legally possible, but owing to the high cost of proceedings and certain restrictions, are practically almost impossible, the dissatisfied take their affairs into their own hands by arbitrarily refusing to live together, law or no law. Comparatively speaking, not many domestic troubles are aired in the Russian courts, but of the divorces granted 71.3 per cent are for desertion. Of the hundreds and thousands of wrecked homes that never come to judicial knowledge desertion is the method usually employed for settling the matter.

Sweden, Norway and Denmark are remarkable examples of those countries, formerly distinguished for conservatism, in which liberal divorce laws now exist, and in which increasing divorce rates have become the rule. Education in these countries has reached a high standard, and women there, having attained a large measure of economic independence, are entering business and the professions in increasing numbers on an equality with men. Sweden is of special interest to us because it is the home of Ellen Key, that fearless and uncompromising champion of free thought, individualism and feminine emancipation; and in Sweden, moreover, some of the theories of this remarkable woman have been put to a fairly practical test.

Investigation of social conditions reveals the fact that in recent years public morality in Sweden has improved, while there has been a great decrease in intemperance. As the sale of alcoholic drinks has diminished, the yearly average of convictions for crime has also decreased. On the other hand, Gustav Sundbärg of the Swedish Bureau

of Statistics, in his work on Swedish social conditions, mentions that Sweden's population has been conspicuous for the number of its illegitimate births, although matters have improved somewhat in recent years. This prevalence of illegitimacy, he considers, is due to the infrequency of marriage, the Swedish marriage rate being lower than that of any other important European country. The average age for men marrying in Sweden is thirty, and for women twenty-seven.

In commenting on this feature of social life in Sweden, Emil Svensen, a Swedish writer who has thoroughly investigated the subject of premature marriages, has asserted that among nations where such marriages are common he finds generally a want of physical and spiritual strength, and, to a certain extent, everything resting on a weak foundation (infantism). Perfect physical and spiritual development, he says, belong to the nations where marriages are made at mature ages, as in Sweden.

With the wide acceptance of liberal ideas it is inevitable that in Sweden divorce should be comparatively easy to obtain. In addition to the usual grounds of infidelity and ill-treatment there are others, including desertion for one year (providing the absentee has left the country) attempt to kill spouse, imprisonment for life, insanity for three years, incompatibility causing separation from bed and board for one year, habitual drunkenness, extravagance, violent disposition, and unconquerable aversion. Hitherto the principal ground for Swedish divorces has been desertion, but suits for this cause are apparently decreasing while extravagance, violent behavior and unconquerable aversion are becoming of increasing impor-

tance. On the other hand, adultery as a cause has shown a marked decrease.

Under the present law mutual agreement on the part of the conjugal parties is practically sufficient to secure a divorce. A fiction is resorted to in some cases which suffices to fulfill the legal requirements, the presumption of collusion, which in some of our States would nullify the proceedings, not being taken into consideration as strictly by the Swedish courts. The procedure is therefore simple. One of the parties concerned—by mutual arrangement—leaves the country for a while and takes up his or her abode abroad. Then the other sues for a divorce on the ground of desertion. The absent party is summoned by the court to return to the conjugal domicile within a given time, and on a categorical refusal to do so, legally ascertained, the divorce is awarded.

The tendency in Sweden during thirty-nine years, from 1867 to 1905, was towards a marked increase in the divorce rate. Statistics showed that the number of marriages to one divorce fell from 177 in the decade beginning with 1867 to 137 in the decade beginning with 1877, and then to 99 in the decade beginning with 1887. In the nine years from 1897 to 1905 the ratio was one divorce to 77 marriages. It was also found that the country districts had a much lower divorce rate than the cities, while the age of the parties obtaining divorce was lower in the cities than in the country. The total number of children affected by Swedish divorces between 1887 and 1905 was 9,595.

Norway, like Sweden, has experienced some remarkable social changes in recent years as the result of the

widespread acceptance of the "new morality." The native land of Ibsen, the bitter foe of conventionality, Norway, to-day is the possessor of liberal laws on marriage and divorce, framed on lines which Ibsen would certainly have commended.

Although James Bryce, in referring to "the simple-hearted people of Norway, with their natural emotions frankly expressed," has doubted whether Ibsen drew any of his remarkable characters from life, and is inclined to believe that they were developed from his imagination, this view is open to question. Some Norwegians whose opinions are entitled to consideration tell us that Ibsen's portraits, unpleasant though many of them are, were not mere creatures of his imagination, but were actually drawn from life, and that a Nora Helmar and a Dr. Stockmann had their counterparts in the flesh.

The general impression in Norway is, that Ibsen performed a great work for his country, and that, however harsh and repellent it may have been in some instances, he told Norwegians the truth, striking hard at old prejudices, and probing deeply into the wounds of social evils like a skilful surgeon. This has been especially true in regard to the position of women in Norway for whom the Ibsen influence has not only been potent, but beneficial. Moreover, the influence of women in public affairs, which may be said to have been practically non-existent a quarter of a century ago, is now a growing power for good in municipal and philanthropic life. Norwegian women to-day occupy a high position, socially, morally and intellectually, a fact which has impressed most observers.

Under the influence of Ibsenism, it is not surprising to find that divorce in Norway has increased greatly in recent years, the rate having advanced 881.8 per cent. in thirty-three years, while there has been an increase of population of only 23.5 per cent. in twenty-five years. In social life, even at the present time, the best society excludes the guilty party, but in Bohemian circles divorce is no bar, and in this respect Norway does not differ from other countries.

The question of the remarriage of divorced persons with ecclesiastical rites is one upon which the opinion of the Norwegian clergy is divided, although the majority are hostile to the "guilty party" receiving any blessing of the church. In recent years there has been a great deal of controversy on this subject, and some of the clergy have been much criticized for their outspoken opinions. Questions of this kind have been dealt with in the works of various modern Norwegian novelists, and in some cases have been treated so plainly and grossly that the law has suppressed certain books.

The Norwegian divorce law is fully as liberal as that of Sweden, and in addition to the relief afforded by the courts, divorces may be granted by royal decree. During the past ten years it has been found that the number obtained by royal decree has increased, while those granted by the courts are actually decreasing. This is probably due to the fact that cases settled by the former method are attended with less publicity than is incident to cases tried in the courts. Government statistics show that adultery is the principal cause for which Norwegian husbands obtain divorce, while desertion is the chief ground upon

which suits brought by women are based. A provision of the Norwegian code enables the sovereign to change a legal separation into a divorce at the end of three years if both parties so petition, or in some cases if only one petitions.

As compared with the American rate, the divorce rates of Sweden, Norway and Denmark seem quite low, being 8, 16 and 23 per hundred thousand inhabitants, respectively. In Denmark, where women are taking an increasing part in the law-making, most of the grounds recognized in Sweden and Norway are included in the present divorce law, with the addition of leprosy. In the last few years divorce has shown a rapid increase in Denmark, while the marriage rate has steadily declined, the increase of divorce in 1906, as compared with 1896, having amounted to 86.4 per cent. The number of divorces per hundred thousand population showed a relative increase from 14 in 1896 to 23 in 1906, while the number of marriages dropped from 53 to 33.

Belgium is another of the minor countries in which the divorce rate has recently made a rapid growth, the number of divorces having shown a greater increase than the proportionate increase of population. Statistics for the years from 1867 to 1905 show that the number of divorces per one hundred thousand population varied from one to three in the first decade, from two to five in the second, from five to eight in the third, and from nine to thirteen from 1897 to 1905. The proportion of divorcees to marriages for the twenty years preceding 1907 was greatest for Brussels, the ratio for that city being over twice that for Antwerp, or exactly twice that of Ghent.

Like England, Belgium has a double standard of morality—that is, offenses of husbands are condoned to a greater extent than those of wives in the application of the divorce law. The present law permits divorce for the following causes: wife's adultery—one offense—husband's habitual adultery in his home, outrageous conduct, ill usage, grievous injury, condemnation to infamous punishment, and the unwavering and legal expression of the parties that their common life is insupportable. Over one-half of the men divorced in Belgium between 1887 and 1906 were from thirty-five to forty-nine years of age, while half of the women were from twenty-one to thirty-four years old. The proportion of divorces granted to persons under thirty-five has shown an increase in recent years.

Crossing the border into Holland, one finds that the Dutch divorces, like those of Belgium, have shown a marked increase in proportion to the growth of population. According to the latest statistics, there were thirteen divorces and three separations to each hundred thousand inhabitants. Judicial separations formerly kept pace with divorces in Holland, but at the present time a marked preference is shown for the latter form of relief. As in some other countries, a large proportion of the marriages dissolved by divorce in Holland were childless, the average number of children being greater for separations than for divorces. The corresponding growth of divorces and separations is explained by the fact that 60 per cent. of the people are Protestants and 27.3 Catholics, and that among the latter judicial separations only are available, owing to religious reasons. Absolute decrees are permitted by

the Dutch law for adultery, malicious desertion, imprisonment for four years, and acts of dangerous violence.

In spite of the apparently liberal provisions of the Dutch divorce law, divorce, legally speaking, is not encouraged in Holland. When married people disagree to such an extent that a rupture between them is imminent and a demand for divorce is made, proof is required that the demand comes only from one side, for divorce by mutual consent is against the law, except in cases of confessed adultery. In every other case the judge is required to do his utmost to effect a reconciliation. Should the demand for divorce be repeated, however, this judge, or a judge of a higher court, must again endeavor to bring the parties together. In the event of failure, a judicial separation is pronounced, which may last for several years, possibly seven, before an absolute decree is granted. Nevertheless, divorces and separations are far more frequent to-day than even five years ago, owing to the judicial disposition to interpret the law more in accordance with modern ideas.

Switzerland, although one of the smaller European countries, has of late years shown a surprising increase of divorce; but the proportion of cases varies materially in the different cantons, being largely influenced by the preponderance of Protestants or Roman Catholics. Under the Swiss law, divorce is granted for adultery, murderous attempt, ill usage, sentence to degrading punishment, wilful desertion for two years, and incurable insanity for three years. In most instances, a decree is not granted until attempts at reconciliation have been made by the court. Government statistics show that over one-

third of the actions in recent years were brought on petitions of both parties, and were based on allegations of incompatibility of temperament, while next in importance were "attempt on life, cruelty, dishonorable treatment and other causes giving rise to strained relations." Adultery was alleged in only one-eighth of the cases.

The fact that Switzerland is composed of twenty-five cantons, which are in many respects as dissimilar as our States, and that a uniform law of marriage and divorce has been in operation since 1876, makes the statistics of Switzerland particularly interesting to Americans. While the immediate effect of the law was to increase the number of divorces, it did not establish a uniform divorce rate for the several cantons. The estimates for twenty years, from 1887 to 1906, for instance, actually showed exceedingly wide differences between the cantons in respect to the number of divorces per hundred thousand population. In 1906 the number varied from 130 in Geneva to 3 in Valais, where about 99 per cent. of the population is Roman Catholic. That the variations in divorce, under a uniform law, can be so wide emphasizes the fact that the legal provisions in regard to divorce are by no means the only factors in determining the divorce rate.

To those who uphold rigorous divorce laws, Spain should be an interesting field for study. Among the Spanish middle classes—the backbone of the country—tradition is strong, the education of women is limited, and the fact that anything is not customary is usually sufficient to prevent its adoption. Spain is consequently one of the European countries in which the women's movement has no organized following. Spanish women, as a

rule, are not inclined to enter business or the professions, and they take no part in politics. Therefore they are not interested in questions of economic independence, and their energies are largely confined to the life of the home. A movement is beginning, however, for higher education and greater liberty of thought and action among women, and there is a certain limited number who frankly range themselves on the side of the so-called emancipation propaganda, who attend socialistic and other meetings, and who aspire to be the comrades of men rather than their objects of worship and playthings. But this movement is still in its infancy and all innovations in marriage are, generally speaking, strongly opposed. At the present time, for example, although the Spanish law provides for civil marriages, such marriages are seldom performed, except in the more progressive parts of the country—notably Catalonia. Elsewhere, civil marriages are not tolerated or even regarded as legal.

Being governed by extreme conservatism, and having a state church which inflexibly upholds the doctrine of indissoluble marriage, it is not surprising that the Spanish people have never attempted to enact a divorce law of the type existing in most other countries. In other words, divorce in Spain amounts simply to what is usually known as judicial separation. The Spaniards have accepted the decree of the Council of Trent as law, and marriage in Spain is therefore regarded as a sacramental contract which can only be dissolved by death. Judicial separations are granted for adultery on the wife's part, and adultery on the husband's part when public scandal or disgrace of the wife is the result, also for cruelty; but

even when obtained on the strongest grounds legal separations are seldom approved by Spanish social opinion, and consequently such relief is not often sought.

Owing to the severity of the Spanish code, violent criticism was recently aroused in that country by the publication of a book by the Infanta Eulalie, in which she expressed extremely liberal views on the divorce question. At the age of twenty-two, the Infanta married Prince Antoine, a son of the Duc de Montpensier, and a member of the French royal family of Bourbon. They were separated in 1900. In explaining the cause of her domestic trouble she said:

"When I married, an annual sum of money was granted to me as a daughter of the King. When I separated from my husband eleven years ago, this allowance under the Code Napoleon was paid to him. I was represented as in the wrong. My husband lives to-day with another woman in a house in Paris within a few yards of where I am living. We cannot be divorced, because there is practically no divorce in Spain. But because of my enemies I was left penniless, while this husband received my money."

In her book the Infanta wrote:

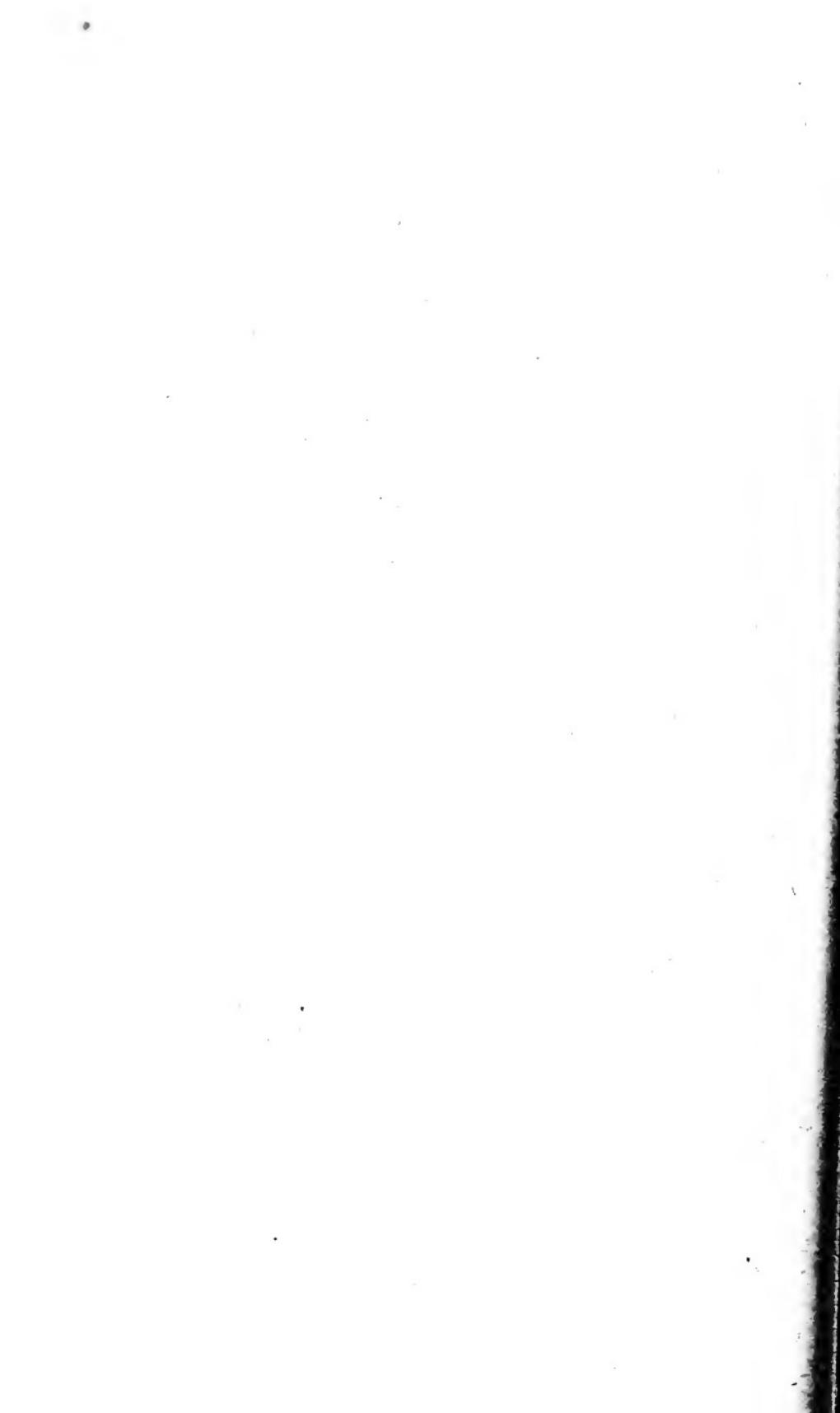
"Divorce offers the advantage of freeing us from considering marriage as an eternal chain, as a crushing juggernaut, or as a prison deliberately chosen to preserve one's means of livelihood.

"It is not just to keep those bound closely to each other who no longer can live together. It is just to put an end to a moral suffering sometimes excessive; to banish those dangers which sometimes lead even to murder; in a word, to escape from



THE INFANTA EULALIE

A royal advocate of easy divorce, whose opinions are based on personal experience



the sentimental and emotional consequences of the indissolubility of marriage.

"Should beings live together for long years when their thoughts and their bodies are strangers? What slaves of marriage are those whose relations have ceased to be normal, whose contact is sterile and invalid and inlaid with hate? Divorce suppresses those gratuitous insults offered to domestic love.

"The enemies of divorce contend that it is the destroyer of the family. That is untrue, for the family no longer exists, judging frankly and sincerely. Where is the family of the ancient time, since there has come into force the law of majority to the liberated child, since compulsory education has diminished the moral responsibility of parents without sensibly ameliorating the conditions of the masses; since in this day of higher education boys and girls become quickly strangers to the authors of their being and are held accountable to the State for their education?

"If hypocrisy were not at the bottom of these objections, the fact would be quickly recognized that nothing remains of the family as a sacred institution.

"Yes, divorce is useful, necessary and moral, but it should become so even more than it is, submitting to many modifications. It is necessary that divorce by mutual consent should become the remedy for those ills which dishonor the human soul. Divorce as it exists to-day does not bring an adequate solution of the painful problems that result from marriage.

"It is inadmissible, inhuman, immoral that a human being who, for twenty years, has suffered patiently for the honor of his or her children should be condemned to pass the rest of his or her days in concubinage, without the right to create a new hearthstone and to consecrate, by a marriage, that devotion and affection which were cures for old ills; to live again in happiness, creating anew moral and social obligations.

"In a new society, where a woman satisfying the requirements of a moral education would find her complete liberty, one would see affinities victorious, and the strength of the

feminine ideal would pave the way to new and vigorous races, healthy in body and mind."

At the request of King Alfonso XIII the Infanta withdrew her book from publication in Spain, but it eventually appeared in England.

In the South American Republics which were originally colonized by Spain or Portugal, and where the Roman Catholic Church is still supreme, the restrictions on divorce which exist in the mother countries are still evident, judicial separations having been the general rule. The progressive Republic of Uruguay has recently passed a law, however, which not only grants divorce on adequate grounds, but entitles a wife to obtain an absolute decree on application to the courts regardless of any offense on the husband's part.

According to a report of the United States Consul, a large influx of divorce-seekers to Uruguay from other South American countries has taken place, and a divorce colony has been started at Montevideo. In Mexico, where divorce is still unknown, a different feeling prevails. It is true that some progressive Mexican women sent a petition to the Government a few years ago, urging that divorce should be granted on the request of husband and wife; but the majority of Mexicans being Catholics, and divorce being repugnant to the Roman Church, no alteration in the law has been made.

Italy is another country in which the influence of custom and religion has been sufficient to check the progress of any innovations in marriage, and to prevent the introduction of divorce. As in Spain, women of the middle class in Italy are usually backward in education,

and as might be expected, the women's movement makes comparatively slow headway. In fact, until recently no married Italian woman could sign a check on her own account, even if the money was her own, and her evidence was not accepted in a law court without her husband's as well, for various mediæval customs still existed. Until lately, moreover, the middle-aged spinster in Italy had a very unpleasant time of it. She could be strong on woman's rights, on economics, on music or literature or politics, but she was seldom listened to. A few women of exceptional ability or remarkable character succeeded in overcoming these difficulties and acquiring influence, but they were very few.

A new spirit is abroad, however, and in northern Italy girls are now beginning to obtain greater freedom. But in the south the position of women among the masses is not unlike that which prevails in Mohammedan countries. Even in progressive Milan the ideal of many a man is to have a wife who knows nothing but church and children. The Italian law, it is true, makes no difference in the education of the sexes, but the great majority of Italian women are still far from being thoroughly educated, the contrast between women and men being usually remarkable. The fairly well educated and well read middle-class wife, who takes an intelligent interest in many things without being very deep, and who is a congenial and intellectual companion to her husband, is still to be developed in Italy.

Under these social conditions, and the fact that the Roman Catholic faith is supreme, it follows that absolute divorce in Italy does not exist, and that marriages are

dissolved only by death. Judicial separations, however, are allowed for adultery, cruelty, imprisonment or desertion. Within thirty years the number of separations has more than doubled. Certain Italian writers have thrown much light on the unwholesome conditions which exist in Italy owing to the impossibility of obtaining divorce, the immorality resulting from this cause being infinitely greater than could possibly be occasioned by the most lax of divorce laws.

Austria-Hungary, which permits both separation and divorce, has within ten years almost doubled the number of its divorces and almost doubled its separations. Under the present civil code, Protestants may obtain absolute divorce for adultery, sentence of the other party to five years' imprisonment, or for desertion, severe cruelty, conduct endangering life or health, incompatibility, or by mutual consent. Ninety-one per cent. of the inhabitants being Catholics are therefore excluded from divorce, but the separations allowed to Catholics have increased fourfold in the last twenty years. Statistics show that divorces and separations are increasing among the lower classes in Austria, and that in such cases the principal cause of trouble is "conduct rendering life intolerable."

In fully half of the Austrian separations and divorces there were no children, and this relatively high proportion of divorces in which there were no children seems rather surprising in view of the fact that in 67.7 per cent. of the cases the parties were of the Jewish faith, which, according to the census reports, shows a far higher birth rate than any of the other sects. Possibly sterility, which is frequently considered a reproach among the Jews, may in

some cases have been the underlying cause for divorce. A large proportion of the divorces and separations among the well-to-do classes were arranged by mutual consent.

Analogous conditions exist in Hungary, where a similar divorce law is in force; but it has been found that in Hungary a majority of the divorces are obtained after a relatively short married life. Over fifty per cent. of the marriages were dissolved before the completion of the seventh year, while in a large proportion the second year had not been reached. In three-fourths of the cases decrees were granted for desertion and for "serious violations of marital obligations."

Japan is the only country in which the divorce rate has been higher than that of the United States. Although Japan, in 1898, had a population of less than 50,000,000, even at that time the Japanese Empire could show 93,949 divorces, while in this country in 1900, when the population was nearly 76,000,000, 55,502 divorces were recorded. In Japan, in 1898, there were 215 divorces to every hundred thousand inhabitants; in the United States in 1900 the rate was 73 per hundred thousand.

Before the present Japanese civil code went into effect in 1898, the prevailing rate was one divorce to every three marriages, but since then the proportion has changed to one to every six. To some extent this may be traced to the simplicity of Japanese procedure. While the code provides for divorce by the usual legal methods and mentions ten distinct grounds, it also recognizes the traditional way of divorcing an undesirable spouse by mutual consent. This is still the method chiefly employed. In seven years, from 1899 to 1905, the Japanese

courts granted only 1,430 divorces, while the number arranged by mutual consent was 445,890.

Of the 1,430 divorces granted by the Japanese courts 435 were because of sentence for crime, 393 because of malicious desertion, and 277 because of uncertainty for three years or more whether the other party was alive or dead. Only 325 divorces were granted for the remaining seven causes, which include adultery of wife, bigamy, and conduct rendering life intolerable. Japan, it should be noticed, has the double standard of morality which has been the subject of such severe criticism in other countries.

In closing this brief review of divorce conditions abroad, it may be observed that, since the official statistics were published, all reports seem to indicate that, in recent years, a continued increase of the divorce rate has been taking place in most countries. The war now in progress, however, has disrupted social conditions to such a great extent in the countries concerned that when the next statistics are issued some wide variations from the normal rates will undoubtedly be shown. As an addition to our study of conditions in other lands, some interesting features of foreign laws on marriage and divorce are next entitled to notice.

In at least fourteen countries the laws require that an attempt at reconciliation shall precede the trial of all divorce cases. In some instances these efforts must be made with great care and at repeated intervals during the period of one year. Such attempts at reconciliation are said to weed out a considerable number of cases, amounting in some instances to as many as twenty per

cent. Possibly the necessity of meeting the effort at reconciliation deters many from going to the courts with their difficulties. Absolute divorce, in fact, is granted only when the courts are satisfied that the domestic situation is hopelessly bad.

Seven European countries,—France, Belgium, Hungary, Germany, The Netherlands, Roumania and Switzerland—provide for the record of all divorces in the place where the parties reside or in that where the marriage was celebrated. Some require it to be entered on the original record of the marriage. This is a great protection against bigamous marriages which are comparatively rare in Europe. It may be added that England has only one divorce court, Germany twenty-eight, France seventy-nine, while the United States has 2,921 courts empowered to grant divorces.

The fundamental characteristic of the marriage laws in continental Europe is to establish civil marriage as obligatory, leaving the parties free to have a religious ceremony following the civil contract, but in no case to precede it. Military service and sometimes differences in religion are bars to marriage. In France marriage after a second divorce is impossible, the time that must elapse between the first divorce and the second marriage varying with the nature of the case. Sometimes the court may forbid remarriage within six months; sometimes the period is fixed at a year. In some instances marriage is forbidden to the guilty party in a divorce granted for adultery. Similar provisions are made in the laws of most other countries, and in a few instances the guilty person in a divorce case, in which adultery is the cause, is for-

bidden to marry an accomplice. In Sweden the convicted adulterer cannot remarry without the consent of the other party. The laws of most European countries usually require that marriages shall take place in the city or town where the parties actually reside.

It has been noticed that in the last few decades there has been a general tendency in most countries towards an increase in the age of marriage. Even fifty years ago, Professor Metchnikoff in his book, "The Nature of Man," quoted from statistics which showed the ages at first marriage in various European countries. The figures for England were nearly twenty-six for males and twenty-four for females; in France, Norway, Holland and Belgium the figures for both sexes were considerably higher, the average age in Belgium being very nearly thirty for men and more than twenty-eight for women. In England the age has been rising for many years past and probably stands now at twenty-eight for men and twenty-six for women. As already mentioned, this increase in the age of marriage has been one of the causes of the lower rate of births which has become general throughout the leading countries of the world.

The age at which parental consent to marriage ceases is generally higher in Europe than in the United States, and the rule is much more rigidly enforced, although in Great Britain conditions are much the same as in this country. In continental Europe, however, a marriage cannot be legally performed without this formality. The limit for parental consent in the principal continental countries is as follows: France 21, Netherlands 30, Switzerland 20, Norway 18, Austria-Hungary 24, Bel-

gium 21, Denmark 25, Germany 25, Italy 25, Sweden 21.

In France all persons above the age of twenty-one must serve on their parents or grandparents an *acte respectueux*; but since the law of 1896 the forms of this have been less exacting. Before the passage of that law there was no legal way in which anybody could get married without the formal consent of parents, if they were living. A mature man or woman who wished to marry someone unwelcome to his or her parents could summon them before a tribunal and there establish independence of action, but such a proceeding would have been regarded as scandalous, and the last thing that any Frenchman would desire in any aspect of his domestic relations is a public scandal. Consequently, unless the parents, either willingly or unwillingly, gave their consent a marriage was either deferred or rendered impossible.

Formerly, a marriage which took place without the *acte respectueux* would have been regarded in much the same way as a union in which the legal ceremony had been dispensed with. And even under present marriage conditions in France and other countries this recognition of parental control is still observed to a great extent. There are also intricate official ceremonies required by law, and the laxity which enables a couple in some parts of the United States to obtain a license and get married in a few minutes is quite unknown.

In some countries marriages are not only forbidden for a certain period after divorce, but even after the death of one of the parties. This is the case in France, Germany, Belgium, Holland and Italy, where no woman can remarry until one year has elapsed, while in The Nether-

lands and Switzerland the forbidden period is three hundred days. In Austria marriages between Christians and those not belonging to the Christian faith are prohibited, also in Servia, where heathens or persons belonging to no religion cannot marry.

Most countries are now passing laws to prevent the marriage of the mentally defective and those who suffer from certain diseases. In Austria not only the insane, the demented, the imbecile and those incapacitated through such causes, but also habitual drunkards are forbidden to marry. In Germany, where disaster through the transmission of disease befalls either of the parties to a marriage or to a child of the union, an annulment is possible. Even in Peru, where one could least expect to find reforms in marriage, some signs of progress are evident. According to a recent law of that country, any cause which would justify the belief that a marriage would be unhappy, such as riotous or immoral conduct on the part of one of the applicants for a license, is considered a bar to the ceremony. Marked disparity in class or social status is also regarded as an impediment.

Norway, however, has the distinction of having made the greatest innovations in the requirements for marriage. Under the laws now in force, no clergyman may perform a marriage unless both parties have been vaccinated or have had the smallpox. A guardian in that country has the right to retain his ward's property if she marries without his consent. Marriages between those of the orthodox faith and non-Christians are also forbidden.

With extremely practical objects in view, a bill was

recently introduced in the Norwegian Parliament providing that a young woman must be able to prove that she could cook a meal, sew and mend, superintend the laundry and take care of a child in sickness and health, before she could obtain a marriage license. According to the proposed law, it would make no difference if a girl had enough money to employ domestic servants; she would have to be able to do her own work if it were necessary. Advanced women in Norway have also brought forward a measure which proposes that each party to a marriage shall be obliged to sign a certificate of health, specifying any hereditary disease in parental stock of which either may be cognizant. If, after marriage, anything should happen to ruin the health or position of the other, and the certificate was shown to be false, this would be cause for annulment of the union.

The importance of parental consent in marriage, to which reference has been made, strikingly illustrates the difference between the view of matrimony which prevails in most European countries and that which is held by the English-speaking races. While in the United States and Great Britain marriage is supposed to involve some readjustment of family relations, yet the first consideration is the happiness and future welfare of the individuals who wish to marry. In other countries, and especially in France, Spain and Italy, a different idea prevails. Although the happiness of the contracting parties is not overlooked there, marriage is regarded as having a most important bearing on family life. To a Frenchman, for instance, the family and not the individual represents the social unit in this case, and marriage vitally concerns

the relations of one family to another. While an enforced marriage, in which there was no affection, would probably be as repugnant to a French parent as to an American parent, still when a project of marriage has to be considered in France, the disposition is to regard it as a matter in which certain family interests are involved and must be respected.

In Spain, though perhaps to a less degree, the same view of marriage also exists. The so-called marriages by arrangement, however, are usually accepted calmly by Spanish girls, and, as a rule, they turn out very well. But marriage need never be forced upon the unwilling, for the Spanish laws are very strict in this respect. If a young woman should object to an arranged marriage she can place herself under the direction of a magistrate competent to act in such cases. Moreover, if the young man of her choice cannot marry her, he can at least prevent her from being married to anyone else, and can, if necessary, remove her from her father's house and place her under protection until she is of age. Yet should a girl allow this to be done, she would not only be disapproved of by public sentiment, but her parents would probably disown her. Custom in Spain being far stronger than law, such instances of feminine defiance of parental authority are extremely rare.

Another feature of marriage in most European countries is the custom of parents' providing their marriageable daughters with a dot or dowry. While in English-speaking lands this custom does not exist, it is practically general elsewhere. In accordance with this rule, a young woman on entering marriage is expected to bring some-

thing of her own, either in goods, chattels or money. Among the poorer classes this is usually turned over to the husband, who has full rights over the property; but in the higher grades of society, and especially among the well-to-do middle classes, the bride's portion is for her own use and goes to her children after her death. In France, if there are no children, it is sometimes returned to the family instead of being retained by the widowed husband. Marriages in France, Germany and other European countries are seldom arranged without a stipulated dowry, the income of the average young man, whether in business or professional life, being insufficient to support a wife without some assistance of this kind.

At the present time, when certain English and American writers of advanced opinions are urging that marriages should be based on definite contracts, and conservative people are condemning the idea, it is interesting to observe that the contract system has been already adopted in certain European countries so far as the dowry is concerned. In France, for example, there are four marriage contracts in general use: (1) the husband has full authority to dispose of the dowry as he desires; (2) he may dispose of the income of the dowry, but must not touch the principal without the wife's consent; (3) husband and wife have individual management of their incomes, and if childless the wife may will her fortune to her husband or to anyone else; (4) the parents may give a certain dowry to the bride, such as a house and its annual rental on condition that she shall not dispose of it until her first child, if she has any children, reaches the age of twenty-one, when the dowry is transferred to the child. The

French contract, it may be added, not only provides for the disposition of the dowry, but covers the various contingencies of married life.

Strange to say, European women who are subject to the dowry system strongly approve of it, and insist that marriages on which it is based are, as a rule, not only made up of real affection, but are also guided by a moderate portion of practical considerations. They believe that the woman who has a dowry of her own enters the marriage state with a certain feeling of satisfaction and self-respect which cannot be experienced by the bride who is utterly dependent on her husband. It is also their opinion that the average American girl wastes enough money before marriage to make up more than the marriage portion of her European sister in the same grade of society. The fact that so many American marriages end in disaster on account of money matters is regarded as further proof that the lack of a dot and of proper economy is responsible for much American divorce.

This custom, however, is never likely to be adopted by any people influenced by the ideals of the Anglo-Saxon race. The same is to be said of the custom of arranging marriage by family agreement, which is in direct opposition to our racial sentiment and to the spirit of modern progress with its recognition of the rights of individuals. There are also other arguments in favor of free selection, and it is on this point that Dr. Saleeby has written: "While there are those who tell us that the method whereby natural inclinations are ignored is highly successful and has just as much to be said for it as has the more essentially Anglo-Saxon method of allowing the

young people to choose for themselves, it is incomprehensible how any observer of contemporary France, its divorce rate and its birth rate, can uphold such a contention. On the contrary, we may be more and more convinced that nature knows her business, and that marriage, which is a natural function, should be based in each case upon her indications."

XIII

PUBLIC OPINION

SOME REPRESENTATIVE VIEWS WHICH SHOW THE TREND OF MODERN THOUGHT

IN discussing the social changes of modern times, reference has been made, in previous chapters, to the bitter controversy that has arisen over certain aspects of marriage and divorce. On one side are ranged those who uphold the traditional idea of marriage as a sacrament, binding until death or dissoluble only on the ground of adultery, and who therefore regard the increase of divorce as an evil which should be severely restricted. In direct opposition to this view, an increasing host of men and women, intellectual and progressive, are insisting that if the home is to survive, marriage must be modernized; that it must be adapted to the necessities of the age; and that instead of being restricted divorce should be granted on any reasonable ground. They maintain that, so far from being a menace to society, liberal divorce laws are really beneficial.

Among those who have supported the latter view are some of the foremost sociologists of the present age, and it may be added that even twenty years ago some remarkably liberal ideas were expressed by writers on sociology who were far in advance of their time. Most of these ideas, however, seem only mildly radical when compared

with the views of certain writers of the present day who have studied social questions with a larger and more accurate body of facts at their command. It was in 1891 that Professor Walter F. Willcox excited much comment in conservative circles when he published his work on marriage and divorce. His views were summed up in the following passages:

"The moral or religious ideal of marriage is a life-long union between man and wife. Yet, as a matter of fact, that union does terminate and all relations between the parties cease. Since the Reformation the realistic view of the marriage law has been constantly supplanting or modifying the idealistic. Whether this change has been attended by the lowering of the ideal of marriage would be hard to decide; but it certainly has exerted much influence on the spread of divorce and the legal recognition of the termination of marriage."

This writer mentioned as the chief causes of divorce: the emancipation of women, the growth of cities, the increase of industrialism, the demand for a higher mental life, and the spread of discontent. The prevalence of discontent, he said, had been manifested to a certain degree by discontent with marriage in its present form, as shown by the increase of divorce. Wherever women were most emancipated divorces were most frequent, and the percentage granted to the wife in such communities was excessive. In the United States the percentage obtained by women was increasing, and the same condition existed in ancient Rome, where the legal emancipation of women was attended by a lessening of the ties between husband and wife.

Even at that time, when divorce carried with it the social stigma that is now disappearing, Mr. Willcox wrote:

"Restrictions on marriage, restrictions on divorce, and remarriage after divorce, have been tried in various places and at various times and have proved of little effect. Legal reforms cannot accomplish much. A new moral and religious reform is needed to teach and enforce the individual duty of wives to remain faithful to their husbands, though not compelled to do so as formerly by the law of economic dependence; new duties of husbands to their wives, not as subordinates, but as equals."

Sociologists of the present day are not only devoting much thought to the problems of marriage, but are making a profound study of the divorce question. Professor Simon W. Patten, of the University of Pennsylvania, for example, agrees with many other writers that one of the greatest preventives of increasing divorce will probably be found in the further economic independence of women. He also agrees that women should continue to be wage earners after marriage if they were so before. While enabling them to retain their freedom this would also afford them far less opportunity to become dissatisfied with married life, and the joint salaries of husband and wife would provide a much larger income for the household. As supplementary to this, some sociologists, as we have seen, go so far as to advocate the endowment of motherhood by the State. By sociologists of this class divorce as well as marriage and motherhood is placed on a purely economic basis.

Such expressions of opinion as these indicate that the

views of many sociologists to-day are far more radical than those expressed by Professor Willcox twenty years ago. Instead of urging mismated husbands and wives to endure unhappy marriages, the opinion of the advanced school of writers is, that such unions should be promptly severed in the divorce court. They also protest strongly against all forms of coercion in marriage. Such is the position taken by Professor James P. Lichtenberger, from whose excellent work on divorce several quotations have been made.

Generally speaking, Mr. Lichtenberger takes the modern, progressive view that increasing divorce is simply the product of underlying social forces which are inherent in modern society. He denies that these forces are evil, but argues that many of them are due to changes in social environment which will, in the end, prove beneficial, although the effects arising from readjustment may seem for the time disastrous. The increasing divorce rate, he believes, is the result of social changes now in progress and "freer divorce is the outcome of new ideals of social liberation, equal rights and opportunities, individual liberty, greater intelligence, higher education and the improved status of women, opposed to which is religious conservatism." He is a strong believer in the civil contract theory of marriage, and the individual rights of men and women, and is decidedly opposed to the coercive maintenance of marriage where all natural ties have been severed.

Mr. Lichtenberger believes with Herbert Spencer that the monogamic form of sexual relation will survive upon the basis of mutual attraction and choice of companion-

ship, of reciprocal rights and an equal standard of morality. "This," he says, "will take the place of the coercive marriage with its inequality, economic dependence and dual standard of morals. It will be an actual bond; so that perhaps it may be that the maintenance of the legal bond will come to be held improper if the natural bond ceases. There is no danger that romantic affection and all the finer sentiments associated with married life, evolved through long ages, will disappear or become less effective. Men and women will continue to love, court and marry, and right ideals of the marital state will insure their living happily ever afterwards."

Similar views have been expressed by Professor George Elliott Howard, author of the "History of Matrimonial Institutions" and other works, who is regarded as one of the foremost authorities on the divorce question. In reviewing the progress of divorce in the United States he recently wrote:

"The rising divorce rate is a direct measure of the rising ideals of liberty and fitness in the family life, ideals which one spouse has and the other violates; just as the rising standard of social control exercised by the State over its citizens, as, for instance, in the restraint and punishment of every new form of conduct, is a measure of new and rising ideals of civic righteousness.

"That the sources of the divorce movement are bad social conditions which may be remedied is illustrated by the sinister fact that directly or indirectly 184,568 divorces, or nearly twenty per cent. of the entire number reported for the two decades (1887 to 1906), were granted for intemperance, and in nine-tenths of these cases the culprit was the man. Surely the situation calls loudly, not for less divorce, but for less liquor and fewer saloons.

"In the case of desertion the wife is the chief sufferer and the chief beneficiary. The divorce movement, it is quite safe to say, is in a large measure an expression of woman's growing independence.

"In conclusion, it is an error to assume that because a divorce law increases the number of decrees it is therefore bad. Divorce is administered by the State as a remedy; and an increased application of the remedy may be a positive good. Absolute prohibition of the remedy or a too rigid restriction of its use may tend to conceal the existence of social disease. Consequently, frivolous marriages and marriages physically, spiritually or sociologically bad are very apt to end in the divorce court.

"When we have checked desertion, controlled or abolished the liquor traffic, conquered the ravages of venereal disease, further developed household science, thoroughly reformed our crude marriage laws, and devised an educational system which shall prepare young men and women for the duties of marriage, parenthood and the family, we may expect to see a fall in the divorce rate because less divorce will be needed."

It is noticeable that most recent writers who take the liberal view of marriage and divorce have agreed with the conclusions reached by Professor Howard. Among those who have written on such lines is Professor Earl Barnes, formerly of the State University of Indiana and the Leland Stanford Junior University, who has gained some distinction as a sociologist. In his recent work, "Woman and Marriage," he has advocated the complete modernization of marriage, his views, in many ways, being identical with those of Ellen Key. Like most advanced reformers, he is convinced that the interference of the churches with marriage and divorce has been far more injurious than beneficial; that both are purely civil functions in which

the state alone is concerned. In this connection he remarks that "the church has no more right to control matters of marriage than it has to interfere in business or political relations. The State—meaning the whole community—must concern itself with the marriage of individuals, it must prevent the mating of the unfit. Marriage should therefore be a matter of definite record. And since marriage must be contracted in youth, and since inexperienced people make mistakes, men and women must face the possibility of separation." In summing up the conventional objections to easier divorce and the arguments in favor of it, he says:

"There are three great objections which are urged against free divorce. The first is that organized society rests on the family, and that with free divorce anarchy would ensue. But the same argument was used to support kings, aristocracies and a universal church. All these have been set aside in many parts of the world and society seems even more stable than before. The love of men and women is even more powerful and less in need of adventitious support than either patriotism or religion.

"In the second place, it is claimed that children will suffer when parents separate. It is replied that this is true, but they were already suffering when parents had ceased to love each other. The fact that children are involved in only two out of five divorces seems to indicate that children hold parents together when the opposition is not too strong; and when a separation occurs those who favor divorce claim that a child is better off with either father or mother alone than with both if love is absent.

"In the third place, it is pointed out that often only one desires the divorce and that this brings tragedy to the other life. In reply it is claimed that many of the tragedies of life

have always gathered around the love of men and women, that when marriage is declined tragedy often follows, and that compelling a person to live with someone whom he does not love and may even dislike is more tragic than any separation.

"Moreover, the advocates of free divorce claim that their proposals are not radical, but on the contrary profoundly conservative, in that they tend to bring marriage back to its 'eternally binding realities.' Under our present-day conditions of more or less restricted divorce, they further maintain we have a consequent widespread prostitution, irregularities that are tolerated and condoned, and a dangerous number of divorced people who are prevented from remarriage. With free divorce and all excuse for irregularity absent, these advocates say, the unfaithful man or woman would sink to the ethical level of the thief and liar, and most of them would disappear. All transitions are hard, and this one in which we are involved is most difficult of all, but no one can study the conditions around him without seeing that change is inevitable, and that we are not going back to our earlier ideals."

Marriage and divorce, to-day, are not subjects of solely sociological, theological and legal discussion, but they are being studied by men who hold a high position in the scientific world. Among these is Theodore Schroeder, of the University of Wisconsin, who has written several books on sex psychology and is regarded as an authority on this subject. In his book entitled "The Impurity of Divorce Suppression," he makes an eloquent plea for liberal divorce laws and points out some of the calamities which may result from the prevention of divorce and the prohibition of remarriage after divorce. In summing up his views, he remarks:

"If marriage may legitimately include business partnership, intellectual companionship or general good fellowship and mu-

tual helpfulness, why should not a failure to realize these be just as important in insuring divorce as sex disappointment, especially when the rights of children can be properly protected, or when the union is childless? Why should the woman who finds herself married to an habitual drunkard or abusive brute have inflicted upon her, as a life sentence, a choice between submitting to his foul embraces or living in enforced loneliness? Only the blissful irresponsibility of ignorance or the cruel paternalism of fanatics could inflict such a penalty.

"If anything in the natural sex relation is impure, surely a compulsory continuance of a loveless marriage must be the extreme of that impurity. This when submitted to for mere support is the very essence of prostitution, even though done with priestly sanction.

"To deny persons the right of remarriage is but an indirect attempt at legalizing compulsory sex suppression. The consequences only thoughtless people will fail to foresee. It means increased sex irregularity usually, with the countenancing of concubinage and especially, on the part of women, of sex inversion and other perversions still too numerous. These are the impurities which social purists will produce by divorce suppression.

"The epithetic argument against easy divorce recommends itself to the mental indolence of professional reformers and is more effective upon the hysterical than any scientific disquisition based only upon social utility.

"That marriage law is best which allows the greatest liberty consistent with equal liberty, and which affords its protection to each individual directly concerned, and the State, against pauper and degenerate offspring."

Among the distinguished men in other countries who have written on this subject is Dr. Max Nordau, author of that famous work, "Degeneration," who is an earnest advocate of liberal divorce laws. In a recent article he said: "As to the idea of the sacramental character and

indissolubility of the matrimonial tie, it is all very well for archbishops to imagine that all men are, or ought to be, angels. We worldlings, however, know, alas, that more of us poor mortals are sinners than saints, and the law must absolutely provide for the foibles of the sinners. Matrimony is the fundamental institution of civilized society. But without the safety valve of divorce it is sure to explode and to leave behind it a chaos of misery, vice and abject promiscuity, endangering civilization itself."

Some equally emphatic views have been expressed by C. W. Saleeby, M.D., F.R.S., whose opinions on other topics have been quoted in previous chapters. Dr. Saleeby is the author of "Parenthood and Race-Culture," "Methods of Race Degeneration" and other standard works, and is regarded as the foremost eugenist of England. He is an outspoken opponent of judicial separations and other forms of divorce which deny the right of either party to remarry. "From the standpoint of eugenics," he says, "it is wrong that only separation, without the right to marry again, should be available for the normal partner, capable of worthy parenthood, from a person who is proved irremediably insane or defective-minded or otherwise diseased. We must take account of the 'racial poisons' which vitiate the quality of the offspring. It only needs adding that from my eugenic standpoint I would insure that the common responsibility of both parents for their children, which is the radical and everlasting reason for the social institution of marriage, shall not be relaxed, but increased, even while we reform the English law in the direction of sanity and honesty and the truth that institutions are for life and not life for institutions. And I would ques-

tion even the propriety of expressions of opinion on this subject by celibates, clerical or others, however illustrious, who are as such largely incompetent to pronounce upon it."

The illogical attitude of those who insist upon the continuance of loveless marriages forms one of the principal arguments in a recent work, "The Ethical Principles of Marriage and Divorce," by Louis F. Post. In dealing with this subject the author insists that to enjoin the submission to conventional marriage bonds where there is no natural marriage is simply to sanction and encourage an adulterous relationship. "The persons so enjoined are normally married, but," asks Mr. Post, "are they really not unmarried? If their intercourse is to be regarded as chaste, then chastity is only a thing of conventional ceremony and not a principle of natural purity." He adds:

"How vastly better it would be to grant divorce at the suit of either party, the civil rights of the other being judicially considered and conserved, than to continue the prevalent practice of granting divorces only on the proving of marital offences. Knowing this, applicants for divorce would be face to face with the responsibility of passing solemn judgment upon themselves, upon the question of the vitality of their natural marriage. They would be more likely to sound their own consciences deeper and with less rancor than when invited to make a parade of their real or fancied marital wrongs."

The conflict between church law and civil law in the matter of divorce was set forth very clearly in an article by James Realf, which appeared in the *Arena* not long

ago. In discussing this question, Mr. Realf insisted that churchly influences must not retard the proper revision of our divorce laws. The liberal laws enacted by some of the Western States he regarded as an indication of enlightenment and progress. Incidentally he observed:

"Many grounds for divorce are now recognized in the newer States—there should be more. The time which must elapse before a divorce suit can be brought should also be made shorter still. If one can bring a suit immediately for breach of contract, why for a breach of marriage should not a suit be brought with equal promptitude?"

Another writer in the *Arena*, Dr. A. D. Bush, referred to the divergent views on the divorce question between Catholics and Protestants and the conflicting laws of various States. "None of the religious views," he said, "are satisfactory. Even the principles ascribed to Christ cannot be accepted as ultimate truth, since eminent Bible critics, who accept the divinity of Christ, declare it impossible to determine whether any given precept is the word of Christ or an interpolation by a compiler or commentator; while those who do not accept Christ's divinity assert that His precepts are open to the same elements of human fallacy as are noticeable in the Gadarene story."

Dr. Bush insisted that as woman has the natural right to become a mother and has the right to secure for her child the best possible father, so if she has made a mistake in her selection she has the undoubted right to correct it.

Women, as a rule, are inclined to the conservative view of divorce unless they have studied the subject intellig-

gently or have experienced some wrong that has compelled them to change their opinion. There is, however, an increasing number of women writers and thinkers who take an extremely liberal view of the divorce question. They write extensively on this topic, and one of them has even published a paper devoted to the cause of easier divorce. Mrs. Charlotte Perkins Gilman, whose views are notably advanced, has even worked out a system of divorce which provides that the children of divorced couples shall be placed under the guardianship of the State when other means for their protection have failed. This view has also been taken by Mrs. Anna Garland Spencer, who is also strongly in favor of liberal divorce laws. In several able articles that have appeared in the *Forum* and other magazines she has severely condemned the restrictions of the present New York law, and has asserted that it should be amended so as to include other grounds for divorce than adultery. A more liberal law, she insists, would put an end to the collusion that is now so common through the connivance of a certain class of lawyers.

Being an ardent suffragist, Mrs. Spencer considers it presumption on the part of men to decide alone the problems of marriage and divorce in which both men and women are so vitally concerned. For this reason she believes that women as well as men should act as judges in divorce cases. On this point she adds: "There is nothing which so betrays the evil effect upon the spiritual nature of men, of the long subjection of women to masculine control, as the findings of the church councils and court decisions and academic discussions in which men alone participate, as these are related to family life. The

monstrous assumption that men can know better than women what women want, or ought to want, or really need, in that marriage relation which means to human beings of the mother-sex a tax upon the whole nature such as men cannot experience, would be impossible to decent and intelligent men were it not for the extreme egotism engendered in all human beings by the possession of unjust power over others."

Mrs. Spencer believes that the churches have done more harm than good by opposing legitimate divorce, and she points out that no resolution on this subject adopted by any religious body has ever offered a practical suggestion for relieving the troubles of unhappily married couples. She believes in the marriage of divorced persons by clergymen when there is nothing especially flagrant in connection with their divorces; otherwise, the civil ceremony is desirable. She regards marriage as a sacrament in the sense that it makes a spiritual bond, but not in the sense of prohibiting divorce. A marriage, in her opinion, is simply a free and private contract, and therefore she holds that there should be a return to the early New England requirement of a civil ceremony as the true and only legalization requisite, although if sentiment demanded it, this could be followed by an additional religious ceremony.

Many recent writers on divorce have pointed out that in most of our States, as in England, divorce is a luxury which only the rich can afford. For every rich man or woman who has a good cause for divorce, they say, there are a hundred poor persons similarly situated, but the cost of divorce proceedings debars them from relief. Such a

state of affairs is neither just nor democratic. In speaking of this, Mrs. F. H. Cothren, President of the Civitas Club, of New York, recently said: "Any one who has spent a few hours in the Court of Domestic Relations or has talked with the probation officers of our police courts will readily admit that there are numerous cases continually coming up in which divorce is the wholesome and natural remedy. In some cases the women would be better off, in other cases the men. Frequently it would be a good thing for both of them. The judges of the court, however, can simply suggest some makeshift arrangement that is a hideous mockery of the married life, because they realize that neither the man nor the woman has the money to pay the court costs and the lawyers' fees requisite to a divorce suit."

While making an earnest plea for liberal divorce laws, Mrs. Cothren was equally emphatic in asserting that the solution of the divorce problem could not be attained in the courts or the churches, but only in the home. "The institution of divorce is wholesome," she said. "In this country it has been corrupted by the abuses of the rich, but that is no reason for abolishing it. The abuses should be abolished. Rich and poor are on the same basis financially when they go to the marriage bureau for a license, and they should have an equal chance in the courts when it becomes necessary to dissolve a marriage. The answer to the whole marriage question, however, lies behind the altar, and the same may be said of the divorce question. The remedy for existing evils must be found in the home, and largely through the proper rearing of children with a wise regard for early impressions and a

proper training in morals. When a husband and wife have each other and devote themselves to the rearing of moral, clean-minded, intelligent children, they are not likely to have any divorces in the family. But wherever they find that it would be best for themselves to separate they should be permitted to obtain divorce with as little publicity as possible. Children brought up in an unhappy or immoral atmosphere are not likely to make ideal husbands or wives."

Mrs. Rheta Childe Dorr, in her book, "What Eight Million Women Want," regards divorce as a question of economics rather than morals. "The prevalence of divorce," she says, "shows that women are no longer satisfied with the existing conditions of marriage, and the number of divorces, great as it is, by no means indicates the number of women who are unhappily married. Many women still endure unhappiness to the end. Most of the suffering of ill-mated women is borne because they and their children are dependent upon men. A woman stands infidelity and abuse only because if she resented these things her children might starve. But in the face of the anathemas of the church, in the face of tradition and prejudice, accepting in the great majority of cases the necessity of earning their own living, more than six hundred thousand women have repudiated the burdens of uncongenial marriage within the past twenty years. That is the most important fact since the slavery question was settled."

Dr. Saleeby's distrust of the opinions of celibates applies with equal force in other directions whenever the questions of marriage and divorce are being discussed.

There is, in fact, a great danger in accepting views on certain questions of morality which emanate from any people of prominence whose position in the world may cause their judgment to be biased. Under present conditions it would be impossible, for example, for a statesman who took any other stand than upon that of the uttermost conventional morality to retain his place in public life. Consequently, we find that without exception the utterances of leading American statesmen on the subjects of marriage and divorce are advocative of merely nugatory reforms, if indeed they are not severely reactionary. This may explain, in some measure, the extremely conservative position assumed by Mr. Roosevelt.

In a letter to Bishop Doane, during the Inter-church Conference on Marriage and Divorce at Washington, in 1905, Mr. Roosevelt, then President, wrote that "questions like the tariff and currency are of literally no consequence compared with the vital question of having the unit of our social life, the home, preserved." This, of course, is a position with which the most ardent advocate of a reform of our marriage and divorce laws would be extremely unlikely to disagree. Unhappily, however, this is not the question at issue. The home, as an institution, is undoubtedly endangered by a multitude of new conditions which have already been discussed. In response to what is surely an admissible demand, for some adjustment of laws that would cease to perpetuate failures and would, at the same time, preserve the status and decency of the successful marriages, Mr. Roosevelt has had very little to suggest beyond a general improvement of human nature by more careful training in youth. In the mean-

time, he is contented, apparently, to leave us contending with the miseries produced by our defective temperaments.

Mr. Roosevelt's views on the divorce question were embodied in an authoritative third-person statement, printed in a leading magazine not long ago, from which the following is extracted:

"Mr. Roosevelt cannot take the pagan view of marriage. He holds that one of the worst fallacies is to excuse the breaking up of a home on the plea of love. Man is master of his will and love can be controlled. Love that is worth anything must be capable of sacrifice, and a man who will not accept responsibilities is not worth his salt. Marriage cannot be looked upon as the corrupt Romans regarded it.

One of the most unpleasant and dangerous features of our American life is the loosening of the marital tie among the old American families. Among the vulgar and ostentatious rich, disregard of responsibilities may be expected; but it is most deplorable when the easy breaking of the marriage tie is looked on even humorously by the descendants of the Pilgrims and Puritans whose ancestors were to our country what the sons of the wolf-suckled founders of Rome were to the city of the world that lost itself in luxury.

Mr. Roosevelt considers that divorce laws are dangerously lax in many States. He agrees that the guilty party in a divorce suit for adultery should not be allowed to remarry. In cases where a mistake has been made through lack of full knowledge, ignorance or consent, divorce may be allowed. In certain cases, too, remarriage should be permitted. He believes in judicial separation for certain cases.

While strongly in favor of uniform divorce laws, he also thinks there should be uniformity in marriage laws. That in one State a license to marry may be required, while in another the mere presentation before a clergyman or 'squire' should

be enough, makes marriage so easy that unspeakable evils follow. Nevertheless, he is opposed to laws prohibitory of marriage, although thoughtless marriages and marriages of the very young should be discouraged. But how? It should be through the influence of family life, through careful teaching in the home, through the cultivation of the sense of responsibility by all who direct the mind of youth. Legislation cannot touch everything. The question of marriage is one of the gravest of all questions."

Recognizing the importance of this subject, Mr. Roosevelt, while President, urged on Congress the need of collecting data on marriage and divorce, and an investigation was subsequently made, the report being published in 1909. A summary of the results of this inquiry has been given in another chapter.

Whenever he has spoken on questions of marriage and divorce, ex-President Taft has taken the same conservative position as Mr. Roosevelt. His views were expressed in a recent statement, in which he said: "Our country rests upon its homes, and if we cannot keep our homes sacred and free from constant demoralizing breaking-up, we had better go out of the business of government altogether. The increase of divorce in this country is a reflection upon the laws of our country. We ought not to permit the marriage tie to be dissolved at will. You may say we ought not to keep unhappy people together. Who brought them together? We did not. If they got together under a contract, why shouldn't they be bound to the contract, unless one or the other does something which in the eyes of all men ought to release them? We ought to have a general uniform law on that subject that would stiffen up and make sacred the marriage tie."

Felix Adler, who represents ethical culture thought, maintains a surprisingly conservative attitude also. In his book, "Marriage and Divorce," he says that romantic ideas of love, in which men and women magnify each other's attractions, have had much to do with disappointment after marriage. He thinks that marriage should be founded on more solid considerations. He disapproves of the so-called emancipation of women and the camaraderie between the sexes. Marriage, he says, is preëminently a moral fellowship. But if this be so, do there not occur cases in which one or the other party appears to be unworthy and perhaps incapable of fulfilling it? And should not the marriage tie in such cases be dissolved? In answer to this question, he asserts that while incompatibility of temperament may afford a ground for relief, it is one that is apt to be grossly abused. A man must put up with a great deal when he enters into marriage just as a matter of honor. In cases where married life has been rendered intolerable there should be separation but not divorce. Incompatibility in the married should be treated in the same way as differences between the children of a family. Even when they are not lovable, parents cannot cast them off, but must put up with them. He thinks that even adultery should be condoned in certain cases. His whole argument is against divorce.

Among the various religious denominations, as a previous chapter has shown, there exists a wide divergence of opinions on the subject of divorce, some condemning it in any form, while others hold that it should be granted on certain reasonable grounds. The attitude of the churches, and more especially of those which maintain an

extremely conservative position, has undoubtedly had a great influence on the opinions of most of our statesmen and on the attitude of some of our lawmakers.

Perhaps the most liberal of the sects is the Unitarian, and the attitude of this denomination in regard to marriage and divorce was recently explained by one of its leading clergymen, the Rev. Charles F. Dole of Boston. "In the best modern thought," he wrote, "marriage is regarded as a relation constituted especially by the love of the two persons concerned. It is their marital love that constitutes the real marriage sacrament; and while the ceremony is to be honored as 'an outward expression of the inward purpose of the husband and wife,' the legitimate aim of divorce is to recognize that under more or less unbearable conditions real marriage does not exist. Absolute divorce for legitimate reasons and the right to remarry are therefore recognized by the Unitarian Church."

In direct opposition to this view, the authorities of the Roman Catholic Church, as we have seen by the utterances of Cardinal Gibbons, have maintained an unaltered and apparently unalterable position in prohibiting absolute divorce with the right to remarry.

The Protestant Episcopal Church represents a variety of views, from the most conservative—quite the equal of those of the Roman Catholic Church—to the most progressive. As an example of the ultra-conservative attitude, Bishop Greer, of New York, may be quoted. "I do not believe," he says, "in divorce, public or private, for rich or poor, for innocent or guilty—legal separation sometimes, but divorce never. Marriage must be binding

until death releases the survivor. It is a hardship in some cases for remarriage to be prohibited; but we must consider the greatest good for the greatest number, and the welfare of society as a whole."

Bishop Greer's predecessor, the late Bishop Potter, on the other hand, took a fairly liberal view of divorce. In an article on this subject he said: "Christ's words about divorce are not to be construed as a positive law, but as expressing ideal marriage and corresponding to his words about eunuchs, 'which not everybody can receive.' The circumstances which justified a modification of the original divine law of marriage still exist in many conditions of society and even of individual life. The exegesis of the early church was closely connected with theories about matter and about the inferiority of women and of married life which are no longer believed."

From what has been presented in this chapter it must be conceded that no investigation of the opinions of prominent people on marriage and divorce can be undertaken without revealing at once a sharp divergence between the views, on the one hand, of scientists solely concerned with the facts of life and progress, and the views, on the other hand, of churchmen whose very position postulates and depends upon the exercise of some degree of control over morality, and of statesmen whose political acceptance equally depends upon their colorless orthodoxy of moral belief. It is unnecessary to press this contrast to any defined conclusion, for its significance must be self-evident.

XIV

SCIENCE AND MARRIAGE

HOW SCIENCE IS TRYING TO SOLVE SOME INTRICATE
MATRIMONIAL PROBLEMS

SCIENCE, which has solved so many problems of the modern world, holds out sanguine hopes of settling the question of sex unrest, which in its last analysis is simply the problem of securing the birth, development and consequent welfare of healthy children through the judicious mating of those who marry with parenthood in view. With a growing realization of this fact, society is gradually ceasing to claim any control over those activities of the individual that do not react adversely upon itself and upon posterity. Therefore, the right of individuals to engage in any number of sterile unions seems destined to cause society less concern, while ultimately attention will be concentrated instead upon those real marriages whose object is not a romantic career of indulgence, but the responsible procreation of children under the most favorable conditions. Such marriages will undoubtedly receive every safeguard that science can devise and the laws secure.

Science is extending its work in other directions. Not only is it examining and analyzing the causes of unhappy marriages, but it is pointing out certain means by which

the whole institution of matrimony may be placed on a more satisfactory basis. Among other things, it has shown the necessity for instructing the young in the principles of sex hygiene, an idea which, in spite of some opposition, is gradually receiving the approval of public educators. Years ago, Professor Howard declared that the necessity for education in such matters reaches to the very foundations of the marriage problem, and the present movement, therefore, seems destined to have greater results than is generally imagined.

Science, furthermore, has shown the physical and moral risks that are involved in binding people together for life, without scruple, in the most artificial and ill-assorted unions. Research in the domain of psychology, for example, has revealed the serious evils that may result from incompatibility of temperament; and in this respect science, as usual, is far ahead of the times. Even in these supposedly enlightened days it is comparatively common for uninformed people to find something humorous in the mere suggestion of incompatibility, which is popularly supposed to be an invention of modern times chiefly employed by men and women of questionable morals as a pretext for obtaining divorce.

Science, however, has emphasized the fact which, it would seem should be perfectly obvious to all thinking people, that one of the foundations of happy marriage is compatibility of temperament, and that considering the amazing differences between individuals, intellectually, morally and socially, the wonder should not be that so many marriages fail, but that such a far greater number actually succeed. As the marriage ceremony has no

magic influence in changing the dispositions of those who marry, the risk of serious discords in married life, destructive alike to health and happiness, will probably always exist. In some instances the causes of friction may be removed by mutual concessions or a striving for greater harmony, but in other cases the only satisfactory remedy seems to be absolute divorce.

Among those who have made a study of this subject is Dr. W. L. Howard, who has written a great deal on psychology and matters of sex. He has found that one of the most frequent results of incompatibility is the nagging on the part of men and women which serves to render married life intolerable. In former times this would have been attributed simply to ill temper or a bad disposition, but the psychologist, by tracing out the real causes of these temperamental outbreaks, presents a more satisfactory explanation. In the case of women, Dr. Howard finds that the nagging habit is usually due to psychopathic conditions innate in the sex, while in men it is simply the reflex of constant friction at home. "Man," he says, "does not understand that the emotional outbreaks in women generally have a nervous origin and are not always a mere demonstration of temper. Many times the man is cruel; he wounds by harsh words when he could bring harmony by tender acts and silent tongue. He doesn't, as a rule; he simply nags. Especially is this so when the man starts drinking."

Dr. Howard cites the case of a man who was married to a nagging woman whose incessant tongue lashings had disastrous results. They drove the husband to drink, he also became a nagger and eventually the wife obtained

a divorce. A year afterwards the man remarried, and his second wife was a physically balanced woman. She was fit to be a wife and mother and to-day she is both. After his second marriage the man stopped drinking, and harmony and peace are to be found in his new home. The first wife also remarried, but again resumed her nagging habit and her second husband eventually contracted it. This woman, says Dr. Howard, was a nagger as a result of ill health; and in each case the men contracted the same habit because the symptoms of this ill health reacted upon normal instincts which they had not learned to control.

In other cases mentioned by Dr. Howard husbands were solely to blame for the irritation which led to domestic strife, and in some instances their behavior made physical wrecks of their wives. He adds: "No so-called barbarous nation allows such sacrifices of human lives as our so-called civilization practices daily. We shall have the brutal husband, the cruel insinuator and the nagger until preachers, teachers and parents understand that a boy who grows up ignorant of woman's emotional moods—who gets no hint of her physical limitations—is going to be unconsciously brutal in words and merge finally into that unbearable beast, a nagging man."

Dr. Howard divides irritating husbands into three classes: brutes, insulting complainers and subtle irritators. He is especially severe on the man who litters up the house and adds to the work of the tired and over-tidy housewife. He also denounces the man who nags about his food, criticizes his meals or demands them at unreasonable hours. The nagging of women, the doctor believes, is

often due to suppressed emotion which must have an outlet. In support of this he mentions the case of a young married woman who was extremely fond of dancing, but was debarred from this amusement by her husband. She became a nagger and a divorce seemed probable. The husband was finally persuaded to allow his wife one winter of freedom in dancing. She became a changed woman. The reason was that she had no maternal duties, no outlet for suppressed emotion, and so she was irritable, irritating and complaining, and the husband, of course, nagged.

The worst class of nagging men Dr. Howard has found among artists, literary men and musicians. This, he believes, is due to the feminine traits among men of this type, which causes an outbreak of discontent and fault finding. "I do not mean effeminate characteristics," Dr. Howard explains, "but in every man born there exist some of the characteristics of the female. To the female belongs the love of beauty of form, of harmony and imagination. To carry out successfully the arduous physical attention required to transform these æsthetic dreams into something real necessitates a steady application with uninterrupted toil which physiologically woman is unsuited for—her natural duties as a mother prevent it. A few women, it is true, have accomplished things in art, science and literature that will redound to the benefit of all mankind. But in these very women we find strong male characteristics—that is, these individuals have striven along the non-productive lines of the male, and hence have been able to devote all their physical energies to mental work. From a psychical view of the matter they are not

complete women." The artist, the musician and the literary man, Dr. Howard adds, belong to a class by themselves. They irritate wives who make housecleaning and order their first principles. They litter the place with papers or notes, expecting to find them where they left them the next day or the next month. These are only symptoms of their mental makeup. Their irregular modes of work, their failure to keep regular hours of meals and a variety of other idiosyncrasies irritate orderly wives and if aroused such men become confirmed naggers.

Other psychologists have found another reason for the discords which arise between so many married people at the present time. The prevalence of such discords is ascribed to the wearing effects of modern life and the increase of nervous complaints. Dr. Jung, of the University of Zurich, an eminent psychologist, has expressed this opinion. As the result of a long residence in this country and close observation, he pronounces Americans to be "the most tragic people on earth." The United States, he says, is the country of the nervous disease, and in every nervous disease there is a psychic element which is the painful witness of some conflict of body and soul. This nervous condition has its effect upon marriage. Men and women who under normal conditions might live in harmony irritate each other, incompatibilities arise, and in many cases these lead to divorce. As other observers have done, Dr. Jung finds that the American husband has been neglectful of his marital duties. "In every human being," he says, "there is so much vital action and in our scientific work we call that the *libido*. And I would say that the *libido* of the American man is focussed almost

entirely upon his business, so that as a husband he is glad to have no responsibilities."

"In America," adds Dr. Jung, "we notice the 'wooden face,' just as we notice it in England, because you Americans are trying so hard to hide your emotions and your instincts. In Europe we have many little outlets for our emotions. We have an old civilization which gives us a chance to live like men and women. But in America you are still pioneers, and you have the great emotions of all adventurous pioneers; yet, if you should give way to them you would lose in the game of business, and so you practice the greatest self-control. And then this self-control which holds you together and keeps you from dissolution, from going to pieces, reacts upon you and you break down under the effort to maintain it. That is what is meant by psychanalysis—the search back into the soul for the hidden psychological factors which in combination with physical nerves have brought about a false adjustment of life. In America there is just such a tragic moment arrived. But you do not know that it is tragic. All that you know is that you are nervous or, as we physicians say, neurotic. You are uncomfortable. But you do not know that you are unhappy."

American women, Dr. Jung asserts, are not any better off, but, in fact, they fare much worse than the men. "Your women," he says, "by their dress, by the eagerness of their faces, by their walk, are trying to attract the tired men of their country. What will they do when they fail?" The breakdown of so many American marriages and the remarkable increase of divorce, Dr. Jung believes, can be traced, in a large measure, to the strained

nervous condition of the people, which is also evidenced by the growth of the narcotic drug habit and a variety of other evils.

While psychologists are thus investigating the problems of marriage, the sociologists have also made a study of them from a different point of view. Their ideas are influencing popular thought to a great extent, and they seem destined to bear much fruit in our changing notions of marriage and divorce. Among those who have given utterance to some radical opinions on these subjects is Professor Zueblin, now of Boston, but formerly Professor of Sociology at the University of Chicago. In an address to the students of Vassar, a few years ago, he startled his hearers by indorsing certain ideas similar to those of Ellen Key.

While conceding that under present social conditions it is impossible to disregard conventional marriage, Professor Zueblin said it was to be regretted, nevertheless, that any woman whose maternal instinct was strong, but was unable to marry, should be deprived of the opportunity to satisfy that instinct. As things are, he argued, the average woman is usually dependent on being able to marry a man whom eventually she may or may not love, or who may not support her properly. "As the result of this," Professor Zueblin remarked, "women with million-dollar personalities are sometimes tied to men with thousand-dollar incomes," and he added: "Not only is a woman dependent upon a man in the usual marriage, but all her rich nature, the sum total of her personality, is dependent on one man's income."

"Generally speaking," Professor Zueblin explained, "marriage is less a spiritual relationship than a social institution. Love may be made in heaven, and many marriages may be infused with love, but marriage really is a social device for the protection of the children. There would be no objection to people having their spiritual relationships without a license if it were not for this fact. One cannot tell, however, even when a couple are drawn together by an irresistible impulse whether the affection will endure. There is no doubt that a few of the multitude who marry will find in others their affinities. There have been persons who have been ready to die for an affinity, who have lost that affinity and found another in a brief space of time for whom they were also willing to die."

This leads naturally to the question of divorce, and in dealing with this subject, in another address, Professor Zueblin expressed an opinion which has received the approval of other sociologists. "Love," he said, "is indispensable to the protection of the family, and when it has fled it is wrong for two people to live together. They should separate. Many do not, for reasons affecting the home and the children, but the spiritual and ethical development of the child is crushed oftentimes because of it."

In a more recent address, Professor Zueblin declared that "no woman in America can stay at home in these days and be a good mother. The day when women could sit at the hearthstone and leave the direction of political and social progress to men is ended. The quicker women realize this the better for themselves and the country.

The old-fashioned mother is not only out of place, but she is a social anachronism. So long as immorality flaunts itself on every side, while vice and disease hold their grip on the social fabric, and corruption is rampant in our city halls and legislative chambers, a woman cannot stay true to her womanhood and remain at home."

A strong believer in female suffrage, Professor Zueblin is evidently convinced that the greater economic independence of women, their further entrance into public life, and their achievement of the same degree of social and political freedom as men will do much to remedy the present sex unrest and the unsatisfactory conditions of marriage.

On a more practical basis, perhaps, the science of eugenics is now formulating proposals in the same direction, and although it is admittedly unable to bless any particular union with positive assurance, there are many which whole-heartedly and on the basis of ascertained facts it may condemn. This science, in fact, seems destined to play a much larger part in determining marriage relations than is at present imagined. It is a science of comparatively recent origin, although its basis, the study of heredity, is old.

Half a century ago, the Austrian monk, Gregor Johann Mendel, laid the foundations of our modern science of heredity in his observations, which were rediscovered and given to the world in 1895 by the Dutch scientist, de Vries. Mendel experimented first with peas grown in his cloister garden by self-fertilization and cross-breeding, and observed the influence of inheritance

in each generation of seeds. The results of his discoveries are now known as the Mendelian theory, and those plants and animals in which those discoveries were traced are said to show Mendelian inheritance.

A well-known English scientist, the late Sir Francis Galton, who elaborated the finger-print system, investigated on similar lines. He was the founder of what he termed the Science of Eugenics and he placed this science on a rational basis. To quote his own words: "Eugenics (good birth) is a study of agencies that may improve or impair the racial qualities of future generations either mentally or physically. Man, in short, is an organism—an animal; and the laws of improvement of corn and of race horses hold true for him also. Unless people accept this simple truth and let it influence marriage selection, human progress will cease."

As the result of his investigations, Galton showed that English statesmen, soldiers, judges, divines, men of science, oarsmen and wrestlers have married into one another's families to such an extent that the special talents of each son are in no small degree an inheritance from his maternal grandfather. After all, most of us marry our friends' sisters, and so get wives of our own sort, to the very considerable advantage of the body politic. As the modern State has no use for average men and demands specialized types, it is a fortunate impulse which attracts men and women to those of their own sort and thus reinforces their special talents in their children. The chances that any child will inherit a parent's qualities are just doubled when those qualities, in addition to appearing in the individual men and women, run also in

the parent's family. This principle is known as Galton's law.

In discussing the science in its bearing on marriage, a recent writer on eugenics has said: "In fuller form it teaches us that of the total inheritance of any living being—plant, animal or man—each parent has contributed a quarter, each of the four grandparents a sixteenth, each of the eight great-grandparents a sixty-fourth, and so on, while the influence of each generation is just equal to that of all the generations that have preceded it. Every man of science who has taken up, by exact methods, the old case of nature against nurture has reached the conclusion that initial good judgment or good fortune in choosing a spouse will therefore completely swamp any ordinary error of bringing up. Altogether, choosing a wife scientifically is much like picking mushrooms,—an expert can do safely much that looks risky to the unlearned. Failing an expert acquaintance with this rapidly growing science, there is no better working rule than for a man in marrying to select a wife endowed with all his essential excellencies, but his opposite in minor faults."

The greatest usefulness in the application of eugenics seems to be in the improvement of the coming generations by assisting the suitable mating of parents. With the progress of our knowledge of the science two results are destined to follow: First is a tendency towards a wiser mating on the part of men and women of intelligence and education; the second is limitation, by public authority, of the marriage of the defective, the insane and criminal. A third result predicted by enthusiasts is the

advance towards perfection in the human race by the processes of selective breeding, the finest of all arts which deal objectively with life. Everything proves that human beings are quite as plastic as horses or sheep and that if mating could be carried on towards definite ends for even a few generations there might be startling results.

In his work on heredity, Dr. Davenport has pointed out that the success of a marriage, from the standpoint of eugenics, is measured by the number of disease-resistant offspring that come from it. "In so far as young men and women are left free to select their own marriage mates," he says, "the widest possible acquaintance with different sorts of people to increase the amplitude of selection is evidently desirable. This is the great argument for co-education of the sexes both at school and college, that they may increase the range of their experience with people and gain more discrimination in selection. The custom in America and England of free selection of mates makes the more necessary the proper instruction of young people in the principles of eugenical matings."

With his usual skill in forecasting probable future conditions, H. G. Wells has recognized the important bearing that the development of eugenics is destined to have on the coming race. He has not failed to realize, however, that at present it is still an uncertain science. In one of his books he says:

"It has seemed to me that to prevent the multiplication of people below a certain standard was the only real and permanent way of mending the ills of the world. I think so still.

If to-morrow the whole world were to sign an unanimous round-robin to Sir Francis Galton and Mrs. Victoria Woodhull Martin, admitting absolutely their leading argument, that it is absurd to breed our horses and sheep and improve the stock of our pigs and fowls while we leave humanity to mate in the most heedless manner; and if, further, the whole world, promising obedience, were to work this broadly, to gather together a consultative committee, draw up a scheme of rules and start forthwith upon the great work of improving the human stock as fast as it could be done; if it undertook that marriages should no longer be made in heaven or earth but only under license from that committee, I venture to think that after a very brief epoch of fluctuating legislation, this committee, excepting for an exceedingly short list of absolute prohibitions, would decide to leave matters almost exactly as they are now. It would restore love and preference to their ancient authority and freedom; at the utmost it would offer some greatly qualified advice, and so released it would turn its attention to those flaws and gaps in our knowledge that at present render these regulations no more than a theory and a dream. . . . The first difficulty these theorists ignore is, that we are, as a matter of fact, not a bit clear what points to breed and what points to breed out."

The peculiar philosophy of Bernard Shaw on this point is also interesting. In a lecture which he delivered in London recently, he began by startling his audience with the radical proposition that marriage and property must be abolished before any improvement in the human race could be expected. Incidentally he took up the subject of scientific mating and his ideas on this subject were remarkably novel. He said:

"It is the experience of almost everybody regarding marriage that instead of people finding themselves in a great community of marriageable persons of their own age, there are

only about three persons within their reach and they do not like any of them. Nevertheless, they have to make the best of those three. They are driven into a marriage which consequently hardly even represents their natural impulse. Yet natural impulse seems to be the only thing which is to be trusted for the improvement of the race.

In order to give natural impulse a chance to operate satisfactorily there ought to be a serious effort to make the whole community inter-marriageable and widen the sphere of sexual selection. Suppose the whole community had been made inter-marriageable and a Department of Eugenics established. This department might introduce a man to a woman and tell him he is to marry her. The man might object that she had a bad temper and therefore he did not wish to live with her. The department would reply that her temper was the very reason why they wished him to marry her. 'We think that crossing her temper with your temperament would produce a highly desirable combination.'

It seems to me that in most cases of this kind we should make provision by which women could become mothers without having to live domestically with the fathers of their children.'

It should be understood in connection with the rather startling hypothesis quoted above, that there is at present no claim on the part of those interested in the science of eugenics to any knowledge which would enable the State to say definitely which man should be the father of a particular woman's children. The science of anthropology is still in its infancy and incalculable development will be necessary before it is even possible to use it in the propagation of such a quality as physical beauty, leaving out of consideration altogether so complex, subtle and elusive a quality as temperament.

One practical result of the widespread interest in

eugenics has been to call attention to the danger and folly of permitting the marriage of persons mentally deficient or diseased, and allowing them to propagate offspring that are physically or mentally unfit. It is being recognized that while we are building asylums for the diseased, neuropathics and drunkards, nurseries and schools for epileptics, cretans and idiots, sanatoria for incipient tuberculosis sufferers, and refuges—still too few—for the dying consumptives, yet our only hope of finally reducing the extent of these plagues or stamping them out lies in the isolation of hopelessly incurable cases. Nevertheless, consumptives, epileptics and semi-idiots, the diseased and degenerate, are permitted to propagate their own curse. Public opinion is only just beginning to demand that applications for marriage licenses should be accompanied by certificates from reputable physicians setting forth that the applicants are free from any serious disability. Only in this way can an effective remedy be applied for the present conditions in which half of society is obliged to watch, nurse and support the other half, many of whom should never have been born. The only protection for the nation and for mankind is to insure healthy and uncontaminated birth; and consequently stricter laws are required in order to bring about an improvement in this respect.

Writing to the *New York Times* recently, Dr. Barker, one of the foremost physicians connected with Johns Hopkins University, discussed this subject at some length. He has become convinced, as have other able men associated with him, that a national campaign for mental hygiene—that is, for “health of mind”—is not only de-

sirable, but really practicable. He believes that persons likely to transmit bad nervous systems to their offspring should not be allowed to have offspring, and he is convinced that the amount of mental defect and disorder in this country could be greatly reduced if our present knowledge could be adequately applied. To spread this knowledge and apply it is the purpose of the recently organized National Committee on Mental Hygiene. Realizing that among the masses an astonishing degree of ignorance prevails concerning the simplest facts of mental hygiene, the committee believe that the people as a whole should be taught how good and bad minds originate through the influences of heredity on the one hand, and external circumstances on the other. Therefore, people should be instructed concerning certain well-recognized causes of mental disease; they should know the dangers of alcoholism, and they should be made aware of the great prevalence of avoidable mental disorders.

The movement to prevent the marriage of the physically and mentally unfit has received the coöperation of many eminent clergymen. It was only recently, for example, that the Rev. W. T. Sumner, dean of the Episcopal Cathedral of Chicago, announced that no clergyman in his diocese would thereafter marry couples except on presentation of a physician's certificate showing them to be physically and mentally qualified for marriage. Following this announcement, two hundred Chicago clergymen, representing the federated churches, met and adopted a resolution unanimously indorsing Dean Sumner's plan. It has since received the approval of churches in other cities.

To most people it would seem that the State rather than the churches is the better equipped for dealing with the qualifications for marriage. The involved questions, though closely connected with morals, are social and economic, and their proper determination will require the services of lay experts. However this may be, it is undoubtedly a fact that experience has amply proved the necessity for some method of medical inspection. The enormous and irremediable wrong done to womanhood by marriage with men who are suffering from the consequences of past evil lives is one of the tragedies of our present civilization. In speaking of this subject and the disastrous results which follow the marriage of the unfit, Dean Sumner said:

"The awful wreckage of life which is resulting from marriages of this character, the startling fact that in this country there are to-day no less than three million abnormal people for whose care the State must expend \$200,000,000 per year, the marital unhappiness for numberless homes in even intelligent well-to-do circles of life, combine to emphasize the need of some safeguard against the extension of these conditions into the generations to come in increased geometric ratios. The State has done little to safeguard the innocent, and in the new States of the Union, where laws have been enacted, public opinion has not been aroused sufficiently to demand the enforcement of the laws.

"If a man desires to secure a license in Chicago to carry on a street vendor's trade, push a cart or sell shoestrings and buttons, he must be accompanied by a reputable citizen to vouch for his responsibility. If he desires to get married, he passes his name through the window of the clerk's office with the name of a similar unknown female, and they are allowed to marry and propagate their kind."

It is encouraging to observe that several States, as already explained, have amended their marriage laws by adding a provision for medical examination as a prerequisite to the issuance of a marriage license, and have prohibited the marriage of the unfit. An increased interest has recently been shown in regard to making certain sexual diseases a bar to marriage. The increase of knowledge concerning the subtle and prolonged effects of even the milder of the venereal diseases is creating serious and just alarm over the risks of marriage, and the public is beginning to demand greater safeguards.

Not only in the United States, but in almost every other country the eugenics movement is making rapid progress. The first International Congress on Eugenics was held in London in 1912, when all aspects of the movement were discussed. In this country the increasing amount of public interest and demand for information on this subject is to be commended, for it is largely owing to the spread of eugenic knowledge that recent reforms in marriage laws have been effected. Another result has been that courses of instruction in sex hygiene and physiology are now being given in some of our public schools.

It may be added, that at the request of several clergymen and social workers, a branch of the Young Men's Christian Association in New York recently arranged for a course of lectures on eugenics, to be given by Dr. Woods Hutchinson, the well-known writer on medical subjects. In this work Dr. Hutchinson was assisted by several eminent scientists. Simultaneously, in Great Britain, a similar course of lectures was arranged by

the Y. M. C. A., the lecturers including Professor Pearson, who occupies the chair of eugenics at the University of London, Mr. Arthur Balfour, Sir John Gorst and others.

Another important development has been the establishment of the Eugenics Record Office at Cold Spring Harbor, Long Island, New York. Although it has been in existence for only a few years, this institution has achieved some definite and important results in adding to our knowledge of heredity. In three or four years more, at the present rate of progress, it may have surprising information to give to the world. The new institution has been well provided with funds by private subscribers, and at the head of it is Dr. Charles B. Davenport and his wife, both well-known eugenists. Dr. Davenport went to Cold Spring Harbor to take charge of the biological laboratory of the Brooklyn Institute, becoming later head of the station for experimental evolution conducted in the same village by the Carnegie Institution of Washington. While the Carnegie Station is for the study of heredity in plants and animals only, the Eugenics Record Office, which the Davenports founded, is the outgrowth of that work and is devoted to the investigation of human heredity.

In his recent work on eugenics Dr. Davenport gives the following brief outline of the work of the new institution:

"All persons interested in the eugenics movement are invited to send a postal card to the Record Office and ask for a blank form, which is furnished for the purpose of recording their heritage. This when returned is carefully filed, and is

used for scientific purposes only. Specifically the Record Office seeks pedigrees of families in which one or more of the following traits appear: short stature, tallness, corpulence, special talents in music, art, literature, mechanics, invention and mathematics, rheumatism, multiple sclerosis, hereditary ataxy, Menière's disease, chorea in all forms, eye defects of all forms, otosclerosis, peculiarities of hair, skin and nails (especially red hair), albinism, harelip and cleft palate, peculiarities of the teeth, cancer, Thomsen's disease, hemophilia, exophthalmic goitre, diabetes, alkapturia, gout, peculiarities of the hands and feet and of other parts of the skeleton. We do not appeal primarily to physicians for this information but to thousands of intelligent Americans who love the truth and want to see its interests advanced. At the same time, physicians can aid in the work of inducing persons with bodily or mental peculiarities that run through their families to send to the Record Office for blank schedules on which to record the method of inheritance of the trait in question. Thus everyone can share in the eugenics movement.

The Eugenics Record Office will be glad to assist in the establishment of local eugenics societies which shall become centres for the study of local blood-lines and for local instruction. The office seeks to assist State officials in the study of the classes which are supported and protected by the State and to assist the States to locate the centres in which the defectives and delinquents are being bred."

So new is the study of heredity that comparatively few people know about the important discoveries that are being made in this field of research. While the exact laws and principles of eugenics are chiefly still to be discovered, certain definite facts have already been ascertained. The results from the study of skin-pigmentation, of hair coloring and eye coloring, for instance, have not come to the knowledge of one person in a thousand;

yet surely such information should be of the greatest interest to everybody who expects to have children. Already the eugenists know to a certainty that the unit character which is wanting in both parents will be lacking in all their children; and this is true of even such an insignificant thing as eye color, so that parents who have blue eyes—and therefore no brown pigment for eye color—can have only blue-eyed children. On the other hand, if one parent has blue eyes and the other brown, the offspring may have either blue or dark eyes. In accordance with the same principle, parents having light hair can have only light-haired children, while a dark-haired and light-haired parent can have children with light hair as well as dark.

It is equally true that parents mentally defective, especially feeble-minded or epileptic—and therefore lacking the essential element for normal qualities—can have only mentally defective children. But if one parent is mentally defective and the other of sound stock, or both are personally sound, but coming of mentally defective stock, they carry within themselves the possibility of having sound and defective offspring. The grandparents and their brothers and sisters, and the fraternity of both father and mother must be considered in order to discover the qualities of that germ-plasm which from these two ancestral lines is to develop a new generation. Thus it is clear that the children who will have the best endowment, and therefore the best chance in life, will have for their parents those who come from families that are at least physically and mentally sound.

From these discoveries, it is clear that the fate of the

individual depends almost entirely on breed, and they prove that the old saying, "Blood will tell," is well founded. Even the best early training cannot overcome the evil effects of heredity. This was vividly illustrated in a Russian case which was carefully investigated. The child of a woman of bad character was adopted in infancy by a family of good social position. The adopted child was treated as one of the family, and all the children supposed she was a real sister. Yet from early years she developed instincts unlike those of the children with whom she was reared. She lied, she was cruel, she loved to make mischief, and she developed precociously vicious sexual impulses. Though carefully educated, she adopted the occupation of her mother, and at the age of twenty-two she was exiled to Siberia for robbery and attempted murder.

The effect of hereditary influence in a different direction has been strikingly illustrated in the case of some families in which there has been a distinct aristocracy of ability. In this country, for instance, the Abbott and Herreshoff families may be cited as examples of what practical eugenics does in raising the race standard. By marrying only persons of sound bodies and minds, the family of which Dr. Lyman Abbott is a member has in three generations produced twenty-five authors, inventors and musical geniuses. In the same time, and in the same way, the Herreshoff family has produced eleven brilliant boat designers. When the marriage of the unfit is not only discouraged, but actually by law prohibited, there will be produced, through the marriage of the fit, an American aristocracy of ability.

The popular interest which this new science has aroused serves to show the practical spirit of our age. So long as human minds were interested only in the romance and poetry of mating and the pathology of birth, and were satisfied with haphazard guessing at the possibilities of heredity, a science of eugenics could never develop. When men and women were content to explain the feeble-minded and hopelessly crippled or blind child as an affliction of Providence or an unavoidable accident of birth, there could be no earnest effort to discover any principles or laws of heredity. It is indeed true that some races have survived without a knowledge of eugenics as a science, and without any apparent effort to guard the quality of the succeeding generations; but it is also true that many of these races have disappeared from the face of the earth, and that some others still surviving show unmistakable signs of degeneration.

Some enthusiastic eugenists predict that in time the State will control marriage scientifically and not only prevent the propagation of the unfit, but so improve the race that poverty and crime will eventually disappear. To the average thinker such an idea appears to be Socialistic, and it would seem that the Socialists would accept it as part of their programme. On the contrary, several eminent writers on Socialism have declared that the eugenics movement is by no means acceptable. Strangely enough, the Roman Catholic Church, which rejects Socialism, also condemns the eugenics movement on the ground that it is Socialistic. In direct opposition to this view, Dr. Eliot, President Emeritus of Harvard University, insists that "the eugenic conscience should take

the place of the older theological conscience." The same opinion has been expressed by Dr. Havelock Ellis, who is regarded as one of the foremost advocates of eugenics. "Children," he says, "have been born without value in the world because there are too many of them. They have been produced by a blind and heedless instinct, and have been allowed to die by the hundred thousand." American eugenists point to the 500,000 insane, the 80,000 inmates of prisons, and the 10,000 paupers and argue that society must shut out such defectives as these who are let in by the cradle.

The progress of eugenics and its discoveries in the matter of temperament may possibly result in some solution of the problem of suitable mating; but if it accomplishes nothing more than to insure the marriage of the physically and mentally sound this science will have done much for the world. As for scientific mating by the State, that is likely to remain in the realm of speculation. The best of men and women will always choose their mates for themselves. The artificial breeding of the superman would probably breed out of existence the two most important factors that the race has won so far as mating is concerned. These are love and initiative. The superman produced by official eugenics would lose the incentive to take his fate into his own hands, and his descendants would not know the meaning of love.

How the results of these numerous studies of heredity and temperament will eventually affect marriage and divorce it is impossible to predict; but in a few years facts will be known and published that will have a profound bearing on these social institutions. Until they

are known it is useless to speculate upon them. The fact that confronts us to-day is the vast number of unhappy marriages and the increase of divorce. If eugenics, by preventing hasty and unwise unions and by bringing together those best suited to each other, can promote matrimonial harmony, then it may succeed in reducing the dockets of our divorce courts.

XV

REMEDIES FOR PRESENT EVILS

PLANS FOR PROMOTING HAPPIER MARRIAGES AND LESSENING THE HARSHIPS OF DIVORCE

HAVING considered the causes of marriage failures and the increase of divorce, it may be well to examine some of the remedies that have been prescribed for the prevention or alleviation of these ills of modern society. Science, as we have seen, has suggested some eminently practical means for lessening the risks of unwise marriages, which are attended with such serious consequences to those concerned and their offspring. With the same object in view, suggestions have been offered by various writers who have studied the problems of marriage and divorce. While, at present, some of these may seem far too radical for acceptance, yet they are of peculiar interest, inasmuch as they serve to show the influence of the new ethical standards which form such a striking contrast to traditional ideas of marriage.

In examining a large amount of literature on this subject that has appeared in recent years, one is impressed by the efforts which have been made to define an ideal of marriage that would accord with modern notions. How to attain such an ideal and to avoid the risk

of mismating are subjects to which certain writers have devoted much thought. A point whereon they have practically agreed is, that prevention of matrimonial evils is infinitely better than cure, and that to place some check on hasty, unwise marriages should be the first aim of those who seek to lessen the causes of divorce. There is also a general recognition of the desirability of starting at the foundation and paving the way to happy marriage by the proper training of the young. Not only moral training, but instruction in sex hygiene and physiology are strongly recommended by most advanced writers. In discussing these subjects, a well-known woman writer has presented some views that are exceptionally sound and wholesome. Early training of the right kind she regards as the solution of the whole marriage problem, and placing special emphasis on this point, she says:

"Our young people do not demand a knowledge of Greek or Latin or higher mathematics, but these things we carefully offer them. They do universally demand a working knowledge of life and love, but this we prudishly deny. Yet we have only to read the 'Advice to the Lovelorn' column of a metropolitan newspaper to perceive that this anxiety about the wise choice of mates is a thwarted idealism, which being trained and encouraged would blossom into the health and glory of the nation. Of course, we are properly shocked when boys and girls 'go wrong,' but we seem willing to leave them unaided by knowledge to wrestle vainly for control with the mightiest and most superb of biological forces. With naïve sagacity we advise boys and girls to marry 'good boys and good girls,' and think that in doing so we have done enough. But where is the definite standard by which they shall recognize 'goodness' when they are turned loose in a world that will deceive them .

if it can, and just what degree of goodness can they demand and find?"

Answering this question and explaining the supreme importance of early training, the writer continues:

"Let young people face marriage with their eyes wide open, knowing that a decision about marriage is the most important an individual is called upon to make. Let them be trained from childhood in the laws of sex and right living, so that they may fully understand the duties and privileges of life's greatest relationship. Then having met and loved, let them, before they marry, make their fundamental life plans, assign to each other the place they wish to hold, exercising care as to their economic relations and respective duties, and so with the domestic altar firmly built upon a rock foundation they may fulfill their destinies. Until these things are effected there can be no adequate cure for the divorce evil."

The next step in the progress towards matrimony is the engagement, and on this topic a great variety of suggestions have been made. Most modern writers have given due consideration to the question of temperament and individual peculiarities which may eventually be productive of discord in married life. Hasty marriages, it is admitted, must always be condemned, but even a long engagement furnishes no guarantee that a subsequent marriage will be all that could be desired. While it is agreed that prevention of mismating should be the first consideration, nevertheless it is recognized that even with every possible safeguard mistakes are bound to occur, and that marriage should therefore be made less binding. Such was the opinion expressed by the late

George Meredith, the English novelist, who advocated "trial marriages" as a solution of the marriage problem. In a letter to the *London Daily Mail*, a few years ago, he declared that some day the present conditions of marriage would be changed. "Marriages," he asserted, "will be allowed for a certain period, say, ten years." Later on he wrote: "This subject is kept too much in darkness. Air it, air it!"

A similar proposal was made by Mrs. Elsie Clews Parsons in her book, "The Family," which caused a great deal of criticism in this country a few years ago. What Mrs. Parsons did, however, was merely to call attention to two alternatives as a remedy for existing evils known to every student of sociology. These alternatives were:

"1. Requiring absolute chastity of both sexes until marriage or,

2. The toleration of freedom in the relations of the unmarried of both sexes before marriage, that is, before the birth of offspring.

In this event, condemnation of sex license would have a very different emphasis from that which now prevails. Sexual intimacy would not be of itself discouraged or condemned. It would be disapproved of only if indulged in at the expense of health or of emotional or intellectual activities in one's self or in others.

As a matter of fact, truly monogamous relations seem to be the most conducive to emotional and intellectual development and to health. It would therefore seem well, from this point of view, to encourage early trial marriages, the relation to be entered into with a view to permanency, but with the privilege of breaking it if it proved unsuccessful and in the absence of offspring, without suffering any degree of public condemnation."

The idea of trial marriages has received the approval of that versatile genius, Sarah Bernhardt, who recently wrote: "When a man feels that he is bound to a woman the union in most cases becomes irksome. As long as both are free they continue to love, for the very uncertainty of retaining a cherished possession makes one guard it more carefully. Men, especially, should not marry until they have had experience in domestic life. I approve of experimental unions which may result in marriage if both parties are willing. I consider it wisest for men and women to live together before they marry."

A less radical proposal for the prevention of mismatching was made recently by a writer in *Harper's Magazine*, who urged the adoption of what he called "progressive marriage," a plan which he believed would put an end to those rushes into matrimony which are productive of so much disaster. In describing his novel method of approaching wedlock, he said:

"Marriages of arrangement by parents and guardians are not much more successful than love matches, and they will never be accepted by the Germanic races, though the Latins seem resigned to them. But why not take a leaf from the Swiss statute book in the matter of divorce? There it is legislated that if a couple have got tired of each other and wish to be separated, they must come, at several months' interval, three times before the magistrate, who will grant them a divorce only in the event of their final perseverance.

"The same principle could be easily applied to cases of romantic passion. When the lovers think that is the trouble with them and wish to get married, it could be easily arranged that they should appear in the county or city clerk's office and take out their first papers as for naturalization. After two years

they should come again, and then at the end of five years the marriage license could be delivered to them. In this way all the errors of haste and judgment could be prevented and the lasting happiness of the pair could be safeguarded. Perhaps the intervals need not be so long. In some cases a succession of weeks or even days would suffice to bring reflection and forbearance."

There is a great deal of wisdom in this half-humorous suggestion, and perhaps if some such method of entering marriage were in common use, it might result in fewer of those thoughtless engagements which carry with them the moral certainty that a wedding will be followed eventually by a divorce.

Several eminent sociologists have suggested that some check of this kind should be placed on marriage, and that the present system of "easy marriage" should be radically changed. In writing on this subject Professor Zueblin recently said: "There should be a law making it obligatory for marriage licenses to be issued at least six months before marriage, and providing for the widest and most abundant publicity to be given to such announcements. That would do more towards correcting divorce evils than any other thing, and it is absolutely indispensable to the welfare of the family."

The danger of hasty marriages following unwise engagements, especially among the poorer classes, has attracted the attention of many social workers, who have realized the difficulty faced by young people entering adult life in making the acquaintance of suitable mates. It has frequently been pointed out that the range of selection presented to the average young man or woman

under modern conditions is totally inadequate; that opportunities for decent courtship among certain classes are seriously limited, and that the process of mating, particularly in cities, has become a matter of haphazard and often clandestine flirtation. In this way, a state which is only properly entered with gravity and a sense of responsibility is more generally attained in an atmosphere of thoughtlessness and frivolity.

This subject has been discussed by several writers. Edward Carpenter, for instance, in one of his recent works, points out the dangers which confront young people of the poorer classes in their search for a fitting mate.

"It is really monstrous that the girl or youth should have to set out on this difficult quest without a word of help as to the choice of the way or warning concerning the very real doubts and perplexities that beset it. Two people come together who know very little of each other, who have been brought up along different lines, who certainly do not understand each other's nature; whose mental interests and occupations are different; to one of whom the subject of sex is probably a sealed book whose most dismal page has been opened first. The man needs an outlet for his passion; the girl is looking for a home and a proprietor. A glamour and an illusion descend upon the two and drive them into each other's arms. It envelops in a gracious and misty halo all their differences and misapprehensions. They marry without misgiving, but at a later hour and with calmer thought they begin to realize that it is a life sentence which has been passed upon them."

Similar opinions have been expressed by other writers who have made a study of life among the poorer classes in our large cities; and for the purpose of checking the

evils which inevitably result from hasty, unwise marriages they have suggested the adoption of some organized supervision of courtship. Such a system, they believe, would afford facilities for selection, prevent the dangers and demoralization attaching almost necessarily to secrecy, and would also provide some wholesome restraints, the absence of which, under certain conditions, leads to early and thoughtless unions.

It was through a study of these conditions that a clergyman and sociologist, the Rev. Joseph D. Peters, of New Jersey, was led to advocate, through the press, the establishment of "courting parlors" to be under municipal control. In explaining this novel idea, he said: "Something should be done towards equipping public resorts for courting, which would insure young people of the poorer classes against the dangers of hasty marriage. Such a plan would not only be a great help to them in finding suitable mates, but would make it more possible for them to contract marriages likely to bring happiness and contentment, which fifty per cent. of the present marriages fail to do." Mr. Peters' plan is intended solely for the benefit of the poor. His idea is that if young people who meet only in crowded tenements, at moving picture shows, in dark streets and dimly-lighted parks, were given an opportunity to meet in comfortable parlors they would get better acquainted while engaged and find out many things about temperament, living conditions and other matters before they applied for a marriage license.

It is on this account that Mrs. Mary Austin, author of "The Arrowmaker," has also recommended some super-

vision of courtship among the poor. "A State or city," she says, "should foster the development of sentiment between boys and girls. Every city should have a social centre, where poor boys and girls could meet under proper chaperonage to do their courting. It should be unnecessary for young persons, no matter how poor, to meet each other and do their courting in the street."

Even people of a higher social grade have not been overlooked by those who have their matrimonial welfare in view. It has been found that owing to changes in our social conditions there are, in our larger cities, increasing numbers of young men and women, following professional and business careers, who have practically no social life of the right sort, and through conventionality are debarred from meeting each other. In New York City, for instance, it has been estimated that there are 300,000 unmarried men and 450,000 unmarried women, a certain proportion of whom have a very limited range of selection. Some light was thrown on this subject recently when one of the newspapers which had discussed it editorially received hundreds of letters from men and women, mostly under middle age, who complained of being socially marooned.

Taking this idea as a theme for a story, a fiction writer in one of the magazines described New York as the "City of Lonely Men." One of his characters, an unmarried business man with a fair income, complains that he is a sufferer from loneliness, and "at times," he says, "I am convinced that I am the loneliest man in the city, but I suppose there are thousands of others in the same fix. The question is, what are you going to do with

us? There is, I believe, a Lonely League, or something of the kind, conducted by women, but the average young man is frightened of such things and steers clear of them."

In answer to the foregoing question, a woman wrote to the magazine: "Why not start a properly conducted marriage bureau? I don't mean a charlatan institution, but a bureau under the supervision of the best people, where applicants of both sexes could register with full descriptions of themselves, and thus seek mates." An even more daring proposal was made by another woman, who declared that with their increasing degree of economic independence women should have the right to propose. "Woman," she said, "is taught that she can sit down with her feet crossed, and that the proper man is sure to pass by. If that is the case, then she should have the privilege of hailing him if he happens to be looking in another direction. Woman should have more liberty than she now enjoys in the selection of her life's partner. Among the new privileges she is obtaining she should have the right to choose for herself a worthy husband when she wishes to do so."

Young men, as has been pointed out, are already afraid, perhaps wisely, of disguised matrimonial institutions, and will probably find the preceding suggestion even more alarming. Some may possibly have in mind the dangers attending a broken engagement and the liability of a subsequent action for breach of promise, a subject which was recently discussed, in fact, by a magazine writer who had evidently devoted much thought to it. In this writer's opinion, the mercenary way in which

some women regard engagements was sufficient to deter many a man from venturing on matrimony. Following up this argument, he expressed the further opinion that the laws should forthwith put a stop to breach of promise actions. "Why," he asked, "should a man, rightly or wrongly, be haled into court as a defendant for 'breach of promise' of marriage? If human experience and information in general get anywhere, ten women break these contracts to one man who forgets them."

This view was indorsed by the *New York Times*, which, however, made the reservation that in cases where a material injury had been done to an engaged woman, the penalty was just. On the other hand, where only slight injury had been inflicted, "the wisdom and rightness of forcing compliance or exacting punishment is at least dubitable. For either party to a marriage to enter it unwillingly is to make practically certain utter misery for both, and why should anybody be put under any pressure at all to bring that calamity to pass?" In conclusion, the *Times* remarked:

"That suits for breach of promise by men are almost quite unknown, while women not infrequently bring them, raises another question—whether men or women have the more delicacy of mind, the more reluctance to expose 'heart secrets' before the eyes of an always amused and never sympathetic public? Of course, no woman of refined sensibilities ever did or could bring a suit for breach of promise. Only lack of self-respect, inability to feel humiliation, and indifference to ridicule enable anybody to take such a grievance into court. And men with exceptions so few as to be negligible don't do it.

"What this teaches we do not pretend to decide—not, certainly, that men are better than women."

There has been much discussion of late concerning the proper training of young women to fit them for matrimony. In this direction some of our educational institutions are endeavoring to deal with one phase of the marriage problem in a thoroughly practical manner. One of the New York high schools, for example, has started a Domestic Science Department, in which five thousand girls are taught such practical things as housekeeping, cooking, clothes mending and laundry work. Los Angeles has made a similar experiment, the girls in one of the public schools in that city being instructed in household management, home dietetics, housekeeping accounts, dressmaking and millinery. An educational institution in Pittsburgh has established a "School for Brides" as one of its departments, the students being young women who have married before acquiring a proper knowledge of the household arts.

Writing in the *Philadelphia Ledger* recently, Mrs. Christine Frederick strongly commended this new educational idea, and urged its general adoption. As she pointed out, many young women, in these days, enter business life before they have had any proper training in the domestic arts, and when they eventually get married find it difficult to conduct their homes well and economically. "We should not," she said, "expect an architect to build a house or a man to conduct any kind of business successfully without training or instruction, and yet there seems to be a popular impression that women can become homemakers by intuition, or that every woman is naturally a good cook, a satisfactory housekeeper and a commendable mother."

"We are beginning to understand," Mrs. Frederick added, "that if a woman is going to be a successful home-maker she must receive special instruction and training for it, and the place for that training, in my opinion, is the school, both public and private. Some protest that the mother should teach her daughter, but even though we dislike to admit it, nevertheless it is true that children often learn far better from outsiders than from members of their own family. Again, some of the best mothers are so expert that they refuse to endure the mistakes and the apprenticeship of their daughters in home-making study.

"There is no reason why a two-hour course weekly cannot be given in this subject, throughout the year, in our high schools. Older students might learn the values of food, for instance, and carry their work into the chemistry of food as well as chemistry *per se*."

To advanced thinkers, who are convinced that the traditional home is disappearing, that coöperative house-keeping is on the way, and that the activities of women should find an outlet outside the home, these domestic education movements must seem reactionary. Nevertheless, every earnest attempt to solve the complex problems of matrimony in these days is to be applauded; and the same may be said of the various efforts that are being made to arouse the masses to the dangers of unwholesome wedlock. Such movements seem likely to increase as their importance is more generally recognized; and it cannot be doubted that their ultimate effect will be not only to lessen poverty and crime, but to greatly improve the status of marriage among classes where improvement

is most urgently needed. That even at the present time higher ideals of marriage are spreading among young people of intelligence is strikingly illustrated by the tenor of the newspaper discussions of this subject to which reference has been made.

In spite of all efforts to promote suitable mating, however, it is evident that of the individuals who enter into marriage a considerable proportion are unfitted by certain personal traits, by defects in upbringing, or by certain abnormalities, from embarking on any sort of married life which would even faintly approach their own ideals. Economic and other reasons must also be taken into account as a factor in straining the ties of such marriages to the breaking point. The consequence is that the parties to an unwise marriage can only learn the necessary restraints and develop the necessary qualities for a wholesome married life at the expense of considerable suffering to each other. Therefore, it seems reasonable to suppose that with the increasing liberality of thought and the requirements of changing social conditions, some form of marriage contract or contracts will be evolved ultimately, which will provide for remating when a marriage has brought only wretchedness and disaster.

From the facts that have been presented in several chapters, it seems fairly obvious that in most progressive countries, and even in those in which the conditions of matrimony remain conventionally unchanged, the ideals and expectations of those contracting marriage have been profoundly affected by modern thought. The result has been that the conditions imposed are being accepted with certain reservations.

Quite clearly, a very considerable modification would be necessary before the contract of marriage, as legally and conventionally defined, would reflect the personal views of the individuals entering into it. But slowly and inevitably this discrepancy between the contract expressed by law and the contract as implied by the individual is becoming more evident, and it finds expression in various ways. Already there are indications that young men and women of advanced ideas are taking this view, and in some instances they are even putting it into practice. Such defiances of convention naturally excite discussion. It was only recently, for example, that the newspapers gave an account of a young couple in one of the Western States who had signed a marriage contract prior to their actual marriage. This contract provided that after marriage each was to have full personal liberty, and that both must work and share expenses; provision was also made for divorce by mutual agreement in the event of the marriage proving a failure. It is not surprising that the newspapers subsequently published various interviews which were headed: "Clergymen denounce trial marriage."

In spite of the criticism thus excited, it is quite possible that the couples who sign pre-marriage contracts of their own device may be pioneers in what will some day be the universal practice. This tendency towards a relaxing of the marriage bond has become still more evident in the increasing number of divorces and remarriages which take place among the wealthier classes. The continuance of this phenomenon down through the various strata of society is as inevitable as the imitation by the

mass of the population of any other device through which the rich seek to render existence more satisfactory to themselves. Therefore, it seems high time that legislators were induced to study these facts and eventually to construct a code of marriage laws more in harmony with modern desires and needs. Whether this should be done by the recognition of a certain number of varying marriage contracts intended for different purposes and applying to different types of marriage, or whether it should be accomplished by rendering the marriage tie less binding, there seems little doubt that some day it will have to be undertaken by legislation before the great majority of the population begins to take the matter into its own hands. At present, in its attitude towards those who defy the matrimonial conventions, society is very much in the same position as a shepherd who should seek to preserve the peace of his flock by continually driving the unruly sheep outside the fold, a policy which could only be effectual as long as those outside the fence formed the minority.

In one of his works, H. G. Wells has discussed the probable marriage of the future, the marriage contracts which are likely to be introduced and their legal forms. In summing up his predictions, he says: "In the future strongly individualized people will be freer from stereotyped moral suggestions and the less inclined to be dealt with wholesale than the people of to-day. I have already shown cause to expect a period of disorder and hypocrisy in matters of sexual morality. I am inclined to think that when society emerges on the other side of this disorder there will be a greater number of marriage con-

tracts possible between men and women, and that the strong arm of the State will insist only upon one thing,—the security and welfare of the child."

As to what the ideal marriage contract should be, according to his opinion, Mr. Wells has given some eminently practical views. In criticizing the existing marriage system he has pointed out that, at present, matrimonial obligations and possibilities are not sufficiently defined. "A need exists," he says, "for a more definite business settlement to marriage as we know it in England and America. I think there ought to be a very definite and elaborate treaty of partnership drawn up by an impartial tribunal for every couple that marries, providing for most of the eventualities of life and taking cognizance of the earning ability and prospects of either party, insisting upon due insurance, providing private incomes for each partner, securing the welfare of the children and laying down equitable conditions in the event of death or separation. The contract should provide for the health and sanity of the contracting parties and for their proper behavior so far as their offspring is concerned, and for proper care so long as their offspring need it. Such a treaty ought to be a necessary prelude to the issuance of a license to marry. And given such a basis, to go upon, then I see no reason why in the case of couples who remain childless for five or six years, let us say, and seem likely to remain childless, divorce at the instance of either party, without reason assigned, should not be a very excellent thing indeed."

Another writer who has discussed this subject recently agrees with Mr. Wells that a definite marriage contract

is desirable. He is strongly opposed to trial marriages, however, and to contracts specifying marriage for a certain period. As he explains, "Such a plan would not commend itself to young lovers who swear eternal vows, and on the other hand, if the union proved unhappy it would be unreasonable to insist on its continuance for ten or even five years in an empty form which corresponds to no real marriage union. The system of fixing the duration of marriage beforehand for a term of years involves exactly the same principle as the system of fixing it beforehand for life. It is open to the same objection."

Almost without exception, writers of this type have insisted that the true marriage centres in the child, and that apart from the birth and welfare of offspring marriage has no other reason for existence. Among human races, when sexual unions are not followed by offspring, there may be other reasons for the continuance of such unions, but they are not reasons in which either nature or society is in the slightest degree strictly concerned. For this reason, they argue that divorce should be made exceptionally easy in cases in which no children are involved.

It is only natural that suggestions of trial marriages, or contract marriages, should be severely condemned by those who uphold traditional ideas on religious or conventionally moral grounds. That such marriages are really opposed to good morals, however, is denied by many eminent writers, and among others by Dr. Havelock Ellis, who has discussed this subject in his recent work on sex psychology. He points out that in certain parts of

Europe trial marriages have been recognized by ancient custom and have not been unsatisfactory. "If," he says, "the absence of the formal bond constituted any intrinsic disadvantage to young women in sexual relations they would not show themselves so ready to dispense with it. As a matter of fact, those who are intimately acquainted with the facts declare that the absence of formal marriage tends to give increased consideration to women and is even favorable to the vitality and prolongation of the union. This seems to be true as regards people of the most different social classes and different races. It is probably based on fundamental physiological facts, for the sense of compulsion always tends to produce a movement of exasperation and revolt."

It is of interest to add that over a century ago, William Godwin, the eccentric English genius who married Mary Wollstonecraft, expressed almost precisely the same opinion. "The abolition of marriage in the form now practiced," he wrote, "will be attended with no evils. We are apt to represent it to ourselves as the harbinger of brutal lust and depravity. But it really happens in this as in other cases that the positive laws which are made to restrain our vices really irritate and multiply them."

While predictions concerning future modifications of marriage are enthusiastically approved by some people and as bitterly condemned by others, the same difference of opinion exists in regard to the ideal divorce law of the future. Those who take the conservative view look forward to a time when divorce will be abolished altogether. On the other hand, the advocates of easy divorce believe

that even the most liberal laws of the present age should be made more liberal still. Among those writers who believe in liberal divorce laws there is practically a unanimity of opinion that divorce should be made as easy as cheap and as private as possible. Such is the opinion of Bernard Shaw, who has outlined what he believes should be the scope of a sane divorce law, and has given the following advice to lawmakers:

"Grant divorce at the request of either party, whether the other consents or not; and admit no other ground than the request, which should be made without waiting for reasons.

"Confine the power of dissolving marriage for misconduct to the State, acting on the petition of some suitable functionary who may be moved by either party to intervene in ordinary request cases.

"Make it impossible for marriage to be used as a punishment, as it is at present. Send the husband and wife to penal servitude if you disapprove of their conduct and want to punish them; but don't send them back to perpetual wedlock.

"As to the causes, when it comes to 'conduct rendering life burdensome' it is clear that no marriage is any longer indissoluble and the sensible thing to do is to grant divorce whenever it is desired without asking why."

The differences of opinion which exist in regard to marriage and divorce extend even to the sphere of motherhood. At the present time, for example, a subject that is being much discussed, is the desirability of paying subsidies to women who give birth to children and are in need of monetary assistance. The State, it is argued, has a supreme interest in the welfare of its future citizens, and therefore no expense should be spared in pro-

viding for the proper rearing of children when parents through poverty are unable to give them the requisite amount of care. This idea of subsidized motherhood has naturally been condemned as Socialistic, although it has received the approval of many eminent writers. Among those who have written on this subject is H. G. Wells, who believes that mothers who need assistance should receive an ample subsidy, not as a charity, but as a right. In time to come, he predicts, "the State will say to the sound mothering woman: 'Not typewriting, not shirt sewing is your business—those children are.' The State will then assist her before the birth of her expected child and afterwards provide her with support for that child as long as it is kept in a tolerable home in good health, well taught and properly clad." Ellen Key, it may be added, has taken a similar view, and while she opposes the State rearing of children, she is in favor of some form of unconditional State subsidy for mothers. Like Olive Schreiner, she predicts that a new era of motherhood will dawn when women gain complete economic independence.

In this country similar proposals for subsidized motherhood have been made by various writers, who are confident that the plan would do much towards solving one of the most serious problems of matrimony as far as the poorer classes are concerned. Among those who have taken this view is Mrs. Rheta Childe Dorr, author of the book entitled "What Eight Million Women Want." In discussing marriages of the poor that turn out badly and in which the husband fails to support his wife and family, she says:

"Often we hear the question, 'Why do people on the verge of the poorhouse have such large families?' I know that many women would prefer not to have more children than they can support, but being dependent on a man for their bread, they are in no position to choose conditions of child-bearing. Whenever the husband, for any reason, is thrown out of employment or meets with any misfortune the burden falls on the wife and children.

"It seems to me that the ultimate solution will be found in some form of life insurance. The young men and women contemplating marriage will invest in an insurance against the wife's loss of time during the child-bearing period just as any of us buy accident insurance. This may be State insurance, or it may develop in lodges, labor unions and other fraternal orders. It will enable the working woman or professional woman to remain in business life.

"As things are, one child in each thirty-five brought before the New York Children's Court in non-support cases is sent to some institution because the father will not support it. Parents put the children away until they are old enough to get their working papers and then they take them out again and set them to work. The tendency of woman's independence is to make better husbands. That is also the tendency of divorce to-day."

The idea of a subsidy or insurance for motherhood, as Mrs. Dorr has explained, may possibly develop in fraternal orders, but it is not improbable that it will be ultimately adopted by the State as part of a general scheme for raising the quality of the population. Undoubtedly in the future the work of motherhood will be conducted with a degree of intelligence surpassing anything at present imagined, and is destined to raise it from the fulfilment of a mere instinct into a great social purpose. Elaborate education in motherhood and its sci-

tific supervision, visionary as these ideas may seem at the present time, are among the possibilities of future years.

Ellen Key, as usual, has taken a foremost part in advancing these new ideas of motherhood. In one of her works she has proposed that young women should undergo a year of compulsory service analogous to compulsory military service, and during this period should be trained in the principles of hygiene, in the care of the sick, and especially in the care of infants and all that concerns the physical and psychic development of children. The principle of this proposal has since been widely accepted. Marie von Schmid, the German writer, has also advocated a general training of young women in such duties, carried on in a kind of enlarged and improved midwifery school. In commenting on this suggestion a recent writer has remarked that it has far more in its favor than compulsory military service; for while a man may possibly never be called on to fight, most women are liable to be called on to exercise household duties and to look after children, either for themselves or for other people.

An aspect of marriage which has been discussed in previous chapters is the increasing reluctance of women to perform domestic work which was once regarded as the lot of the average wife. The self-supporting young woman, in short, is properly declining to act as cook or housemaid for any young man, or to regard such work on her part as essential to the maintenance of a home. Mrs. Dorr, who has written on this subject, undoubtedly expresses the opinion of an increasing host of women

when she says: "The future marriage will not mean extinction to any woman, but it will mean to the well-to-do wife freedom to do community service. It will mean to the industrial woman an economic burden shared. There will be no longer any class of women who avoid the risk of divorce by refusing to marry. No intelligent man will then venture to suggest to a bright woman that cooking in his kitchen is a more honorable career than teaching, painting, writing or manufacturing."

The increasing objection to domestic work on the part of women is in harmony with the spirit of the age, and its eventual result will probably be the introduction of the community kitchen, as predicted by Mrs. Gilman and other writers. Old-fashioned people, of course, condemn young couples for procuring ready-cooked eatables at the delicatessen stores and their use of canned provisions. They also lament the domestic inefficiency of the average young wife, but in spite of the German Emperor's stern command, women will increasingly refuse to go back to the kitchen. Some intelligent substitute that is undoubtedly on its way will eventually remove a constant source of friction from married life. The new home, now in process of formation, will not lose any of its charm or sentiment through the abolition of the kitchen and household drudgery.

These changes in the conditions of married life are thus making it more necessary than ever for women to find work outside the home, not as a temporary makeshift, but as a life career; and when both sexes are placed on the same terms of equality it will undoubtedly be the rule and not the exception for the wife to remain in

business. The increasing cost of living, which presses hard on most people, is also making it more necessary for the average young couple of small means to share expenses.

Out of the present social upheaval our prophets of the future already foresee the rise of a new home for the new woman and the new man. Communal kitchens and restaurants, it is predicted, will eventually put an end to the present household drudgery among the mass of the people. Husband and wife will work in the world in perfect equality, coöperate for mutual benefit and live together on a new and better basis. For the well-to-do classes Mrs. Gilman believes that the development of the apartment house will, in time, bring child-gardens, gymnasiums, nurseries and trained nurses. In describing this possible home of the future, she says: "A busy woman, happy and proud of her work, could return to her exquisite nest in one of these glorious palaces with her husband and children, to as contented a home life as the world has ever known, a nobler one as well. It may be said that this is not the same thing—the home has gone. The children are at the nursery or kindergarten, the father is away, of course—he always was—the mother is a woman and should give her whole life to the home. No, she should not. No human being should. She should serve society as even her human mate and then together they should go home to rest."

H. G. Wells has made similar predictions concerning the future home, in which parents will be relieved of much of the rearing of the children as at present managed. The child of the future, he believes, will be nourished,

taught and trained almost as though it were an orphan, and it will have a succession of bottles and foster mothers for body and mind from the very beginning. "There will be an increasing number of women," he says, "who from their emotional fastidiousness, intellectual egotism or an honest lack of passion will refuse the common lot of marriage, women often of exceptional character, and it is well that at any rate their intelligence and character should not pass fruitlessly out of life."

XVI

THE FACTS SUMMED UP

A REVIEW OF SOME PRESENT TENDENCIES, AND A FORECAST OF SOME PROBABLE FUTURE RESULTS

HAVING completed our study of the problems of marriage and divorce, we are prepared to sum up the evidence that has been presented and to reach some definite conclusions. As preliminary to this, it will be well to recall the main points of the argument set forth in the opening chapter, and to ascertain to what extent they have been supported by the subsequent facts.

It was asserted, in the first place, that as the result of social progress the status of the home and the family, and notably the position of women, had been changed in many ways; that new ideas of marriage have replaced and are replacing certain traditional notions; and that not only have the general conditions of marriage been greatly modified to fit modern requirements, but as further adaptations are made it is probable that a new and more satisfactory system of marriage will be gradually evolved.

It was further shown that as social progress has effected changes in ideas and conditions of marriage, these changes have served to bring about the present increase of divorce; that the effects of this increase are not neces-

sarily evil; that the tendency of modern legislation is towards the enactment of liberal divorce laws; and that attempts to diminish the volume of divorce by restrictive laws have invariably done more harm than good.

The evidence presented in this work has also shown that conservative and liberal opinion, and even that of the most radical type, agree in recognizing the monogamic ideal of marriage,—the free choice of one woman by one man, and one man by one woman, as mates for life, a union cemented by love and inspired by mutual interests, hopes and aspirations. Such a union demands much, and for the security it gives to the children we have faith in it. Like many other ideals, however, the ideal marriage is not always attainable; and as failures result, oftentimes bringing misery and disaster, society has had to establish divorce courts for the relief of the mismated. Furthermore, it has been recognized that in certain matrimonial troubles absolute divorce is the only adequate remedy. It is on this point, as we have seen, that such a wide difference of opinion exists. On one side, there is the ultra-religious view that marriage is a sacrament, binding for life and therefore indissoluble. Opposed to this is the non-religious view, which regards marriage as a civil contract and dissoluble for any reasonable cause. Coincident with the spread of the latter belief there has been a growing impression that wherever the natural bond of affection ceases true marriage comes to an end, and in cases where it is imperative for the welfare of either husband or wife, such a marriage should be legally dissolved. Those who take this view hold that when the foundations of marriage—affection, sympathy,

identity of purpose and mutual happiness—have been destroyed, and have been replaced with aversion, discord and unhappiness, to uphold such a marriage is immoral.

The increasing acceptance of this principle has undoubtedly done much towards changing public opinion concerning the morality of divorce. It has also served to emphasize the desirability of permitting divorce on such a ground as incompatibility. In short, it is being recognized that as love brooks no bounds, any form of bondage tends to shrivel it up. Furthermore, being independent of the will, love comes and goes and does not remain a moment longer because a man or a woman has taken a vow that it shall last until death.

Those who take this view are therefore convinced that if love no longer remains, and there is a desire for separation, marriage should be dissolved, because to force two persons to remain together who wish to be apart is an infringement of their ordinary human rights. Not only is this idea being more generally accepted, but it is also realized that the removal of undue restrictions from marriage and the granting of perfect freedom to husband and wife in matters of divorce, instead of encouraging frequent separations or other license would be more likely to put married people on their honor and cause them to be more careful in their behavior towards each other. If, it is argued, a man and a woman are as free to separate as to unite, they will continue after marriage to have the same regard for each other's feelings and the same desire to please as existed before marriage.

It is a curious fact that, three hundred years ago, Montaigne discussed this phase of marriage in one of

his essays, and reached the same conclusion. "We have thought," he said, "to tie the connubial knot of our marriage more fast and firm by taking away all means of dissolving it; but the tie of will and affection is so much more slackened and made loose by how much that constraint is drawn closer; and, on the contrary, that which kept the marriages at Rome so long in honor and inviolate was the liberty that every one who so desired had to break them." This is practically the view that is taken by the modern advocates of marriage reform.

Another important phase of the marriage question, revealed by our study, is the changed attitude of the bulk of the community towards both civil and religious marriage, and the growing tendency to disallow State interference with sexual relations apart from the production of children. In other words, those marriages in which children are involved are the only marriages in which society is directly concerned. Husband and wife, in such cases, are legally, morally and socially responsible for the upkeep and proper rearing of the children and in this respect the community is deeply interested. At the same time, there is a growing impression that apart from such academic questions as race suicide, the public is in no way concerned in the childless union, and the consequences of divorce are less serious where children are not involved.

Our study has also shown that the complexities of modern life have put a severe strain on even the best of marriages. In a former generation, when domestic life was comparatively simple, when the strenuous business system of the present age was undreamed of, and

the emancipation of women was still in the future, it was far easier for people to conform to traditional notions of marriage. But, in this age of rapid change, it has been found that certain of these conventional ideas which still survive are in direct conflict with modern conditions and ideals. As a recent writer has pointed out, marriage to-day is becoming more and more dependent for its success upon the adjustment of conditions that are psychical. Whereas in former generations it was sufficient for a union to involve a physical reciprocity, in this age of ours the union must involve a psychical reciprocity as well. Whereas, heretofore, the community of interest between husband and wife was attained with ease, it is now becoming far more difficult because of the tendency to discourage the woman who marries from merging her separate identity in her husband's.

It is the conflict between modern ideas and conditions and the traditional ideas on which our marriage laws and customs are based that has given rise to the revolt against conventional marriage. The causes of this growing dissatisfaction, so evident in the literature of our age, have been discussed at some length in previous chapters. It may be observed, however, that those who take the conservative side of the argument naturally insist that the present marriage system is not to blame for the increasing number of failures resulting from it; but the fault, they argue, lies with the men and women, who, for various reasons, are unable to make a success of their married life. In the same way, an attempt is made to explain the increasing avoidance of marriage by many intellectual persons of both sexes, which is

attributed to selfishness and a desire to shirk responsibilities. On the other hand, many thoughtful writers, as we have seen, take an entirely different view. Marriage under present conditions, they believe, conflicts with the ideals of many advanced people, and this serves to explain why they avoid it. By such writers it has been asserted that in various ways the present marriage system may possibly be an anachronism, a survival from times when the development of womanhood was habitually stunted, and it is therefore inadequate to supply the demands of a fully developed womanhood in our own days.

Among the eminent men who have expressed this opinion is Dr. Saleeby, who says, in one of his recent works: "While the general principle of monogamy is right, it may be hampered by any number of superstitions, traditions and injustices, economic and other difficulties, which, nevertheless, do not invalidate our ideal. Instead of proposing to abolish monogamy, or the important principle of parental care of children, which is primarily expressed in monogamy, what we need to do is to make the conditions of marriage such that it best serves the highest interests."

These are the aspects of marriage then which are becoming more evident from year to year, and their advent, as already observed, has been accompanied by a widespread revolt against certain conventional ideas. Conservative opinion, as we have seen, has declared this revolt to be the result of moral degeneracy, just as it has pronounced divorce to be the essence of all that is evil and is endeavoring to check its growth by means of re-

strictive laws. The review of current discussions of the marriage question, however, so far from revealing any signs of degeneracy, has clearly shown that vast numbers of moral and highly intelligent people are convinced that some traditional features of our present marriage system clash with modern ideals. And while no sane person contemplates or advocates the total abolition of marriage, there is, nevertheless, a growing belief that certain existing conditions are in need of wholesome reform. Some eminent writers, looking to the future, have even predicted that not only will several degrees of morality be recognized eventually but also several types of marriage.

In spite of these radical views, it is not to be expected that any innovations in marriage will be introduced *en masse* at a certain time, for all changes of this description come gradually. Important social advances, it has been said, are made slowly like the long waved progresses of the tide and not by sudden leaps over yawning chasms. Perhaps one of the most remarkable features of all social progress is the fact that its movements proceed almost entirely beneath the surface. It is not until the latest social, industrial or scientific revolution is accomplished that the casual observer becomes aware that it has even begun; and the surprise with which every innovation is received by the great mass of the population is so instantly followed by its calm acceptance, that the two things may be considered as occurring simultaneously. At one moment, for instance, the aëroplane to the average mind exists only in dreams of the mentally deranged; the next moment even the farmer, looking skyward from

his plough, realizes that it is an accomplished fact and an industrial possibility. And so with the domestic concerns of life and the relations of the sexes.

At the present moment, to the casual observer, the conventional institution of marriage would appear to stand as firmly as ever upon the rock of permanence, unassailable and unassailed by any sane person. But thoughtful consideration of the facts that have been presented will show that instead of this being the case, the opposite is probably much nearer the truth. Beneath the surface of civilized life certain forces have long been at work upon the foundations of conventional marriage, foundations which, however solid they may appear to the untrained observer, prove on investigation to be crumbling away. These forces will profoundly affect the future of our marriage system and may quite conceivably lead to the introduction of certain new forms to which reference has been made.

For the great majority of people the first intimation of the newer marriage will be its recognition as part of civilized life; but the sociologist who has studied the action of these forces, and noted their effect on matrimonial conditions, past and present, is led to conclude that if left undisturbed they will be bound to produce certain definite results. From such observations, it seems evident that modifications of our present marriage system are taking place, and in a comparatively few years consciousness of this fact will have permeated all ranks of society with far-reaching effects.

With whatever misgivings one may face this phenomenon, owing to preconceived ideas of morality and the

duties of citizenship, it has nevertheless to be faced; for the fact remains that certain conventional aspects of marriage, like certain traditional features of the home and the family, are steadily disappearing. And as these changes proceed, new conditions follow so closely that when the old order has, at last, given place to the new, the transition will cause no shock to the world at large. These changes in our marriage system will be effected not as the result of any lowering of morality or any license on the part of the morally rebellious, not through the decay of beneficial religious influences, nor the attacks of the semi-intellectual or scientifically impertinent—not for any of the reasons advanced by well meaning but ill-equipped censors of manners, who continually deplore isolated aspects of the change that is in progress; but they will form an essential part of the process of social evolution as measured and inexorable as the swing of the spheres.

It has been remarked that to the ultimate alteration of our marriage system there is no insuperable objection. The ideas on which it is based were largely formulated by an Eastern race nearly twenty centuries ago, and like our social habits they can be modified by ourselves to meet our own needs in our own day. When once we have given up the idea that our traditional marriage service, laws and customs have been laid down for all time by an outside providence, we will allow our liberty in this most private matter to be curtailed by no other authority than the collective wisdom of ourselves.

Whatever the outcome may be in future years, there is one prediction concerning the future which may be

made with some degree of assurance. This concerns the matrimonial qualifications now required by the laws of certain States, which are primarily designed to prevent the marriage of the mentally and physically unfit. There can be no doubt that in course of time such laws will exist in every State—they already exist in most progressive countries—and it seems equally certain that efforts will also be made to put some check on hasty, unwise unions that are doomed to end in disaster. While the laws require a certain interval to elapse before an absolute decree of divorce can be effective and in some instances have placed checks on the remarriage of divorced persons, practically nothing has been done to check that most prolific cause of divorce, the hasty marriage, especially of young people. The enactment of such laws would put an end to our scandalous marriage mills and "Gretna Greens."

With the spread of the eugenics movement it also seems likely that further safeguards to marriage will be introduced with a consequent improvement in the quality of the succeeding generations. While, at present, it would seem extremely difficult for society to impose any check on the heedless procreation of children among the poor and unfit, yet, as various writers have pointed out, such a system must eventually be evolved by society for its own protection. It is interesting to note that an increasing number of women writers and others have considered this question, and have also given their approval to the idea of a State subsidy to mothers. They are convinced, moreover, that eventually some adequate system must be devised by the State for the rearing of poor chil-

dren deprived of parental care—something far superior to the present orphan institutions.

An impartial summing up of the expressions of opinion and the facts in regard to marriage, set forth in previous chapters, makes it possible to reach the following conclusions concerning present tendencies and probable future results:

I. There is an increasing recognition of the civil contract theory of marriage and opposition to any form of ecclesiastical control, so far as the legal aspects are concerned.

II. A growing appreciation of individual rights is leading public opinion to condemn the coercive maintenance of marriage when all natural ties have been severed.

III. New conditions and conceptions of marriage are being evolved which may eventually lead to the acceptance of certain ideas now regarded as radical and dangerous.

IV. One of the probable results of modern tendencies will be the introduction of definite marriage contracts covering all contingencies—a plan already adopted in France—and recognizing even the possibility of divorce.

V. There will eventually be a strict supervision of marriage, and a total abolition of marriage mills and “marrying justices.”

VI. The spread of the eugenics movement will ultimately result in the absolute prohibition of the marriage of the unfit.

This review of the marriage question naturally leads to the subject of divorce, the only satisfactory remedy that society has yet devised for terminating ill-advised and unsuccessful unions. The increasing volume of divorce, it may be observed, can only be logically accounted for on the grounds enumerated in the opening chapter. It is manifestly an effect and not a cause, and it is one of those "costs of progress" which is not necessarily a sign of moral deterioration. It is largely the result of social, political and religious progress, the increasing individualism of men and women, and the demand for a larger degree of freedom and happiness. Through these influences, combined in many instances with higher ideals of what married life should be, men and women to-day are becoming less tolerant of wretchedness and discord in the marriage relation.

In discussing this subject, Ellen Key has remarked that connubial idealism having made greater demands than formerly, modern men and women are less able to bear unhappiness in marriage than were those of former times. Recognizing this fact, scientific students of divorce in the United States are ceasing to contend that the present enormous increase is in itself evil. The truth is that divorce exposes the evils that have crept into and for centuries inhered in the marriage relation; it merely attempts to remedy those evils by dissolving unions which should not be continued. Under the present divorce laws, though more especially under those of a liberal character, unions that were frivolous, morally wrong and physiologically vicious have been wisely severed, and as many

more undesirable unions have been ended by mutual consent.

This argument has been strongly supported by the facts and figures given in the fifth chapter, which discusses divorce in the United States. It may be added that while the census taken of 1910 reported there were about thirty million females of fifteen and over in the United States, of this number 185,068 had been divorced. In commenting on this, Miss Tarbell says: "Considering the difficulties of married life this number does not appall. It rather gives one a greater respect for human beings to see that they can handle such a complicated relation as marriage with such a small percentage of disaster. The number of divorcees found in 1910 was greater proportionately than in 1900, still larger than in 1890. In each of these ten-year periods there has been an increase of one-tenth of one per cent. It is doubtful if this is due to the loss of faith in marriage. A proportion of it is due to a higher ideal of marriage, an unwillingness to see the relation prostituted by a dissolute, cruel or unfaithful partner, in which public opinion is certainly back of the plaintiff, as in the main is the law. A percentage is due to the greater carelessness with which marriages are made, especially those of the young, under our changing social practices."

From all points it seems certain that divorce will continue its upward movement until the world adjusts itself to new social conditions; and until harmony is restored, the disturbance in domestic life should be no more surprising than that there should be upheavals in industrial, political and religious circles. Among the

eminent sociologists who have taken this view is Professor George Elliott Howard, the historian of the marriage relation, who has pronounced the present increase of divorce to be merely "an instance in the mighty process of spiritual liberation which is rapidly changing the relative positions of men and women in the family and society." This statement finds ample support from the fact that while this country and progressive European countries possess liberal divorce laws, divorce is practically non-existent in Spain, Italy and other countries where social progress is slow and women are still unemancipated.

As to the morality of divorce, everything points to the conclusion that society, on the whole, is taking the view that its interests are best promoted by separating the unhappily married; that it is not benefited by insisting that a marriage shall be continued when the life of the two persons concerned is rendered miserable, or even if aversion is shown by one of them. As an eminent jurist has wisely argued: "Society is not interested in the preservation of hateful homes filled with strife, and whether husband or wife is the sufferer, such homes should not exist. Nor is it to the interest of society that good women should be enslaved, that they should live in fear or that they should become mothers by husbands whom they detest. Homes should be filled with kind fathers, with happy, loving mothers, and when they are so filled the world will be civilized. Men and women are not made virtuous by law. The law should protect the virtuous husband and wife, but the death of love is the end of marriage. Love is natural. Long before a cere-

mony was thought of, long before a priest existed there were true and perfect marriages."

This view, it will be observed, has been taken by most progressive women writers of the present day. Mrs. Anna Garland Spencer, for example, in discussing the morality of divorce, has remarked that, "in their new freedom women will no longer endure the unspeakable indignities and hopeless suffering which many of them have been compelled to endure in the past. That last outrage upon a chaste wife and a faithful mother, enforced physical union with a husband whose touch is pollution and whose heritage to his children is disease and death, will less and less be tolerated by individual or by social morality. In so far as greater freedom in divorce is one effect of the refusal of women to sustain marital relations with unfit men, it is a movement for the benefit and not for the injury of the family."

In the face of such eminently sane views as these, it is amazing that there should have been such a persistent distortion of the facts concerning the rise and progress of the movement for easier divorce. From the utterances of public men who have opposed liberal divorce laws, and from the statements of certain writers who have taken the same position, an uninformed person would gain the impression that pleas for easier divorce have usually emanated from people of doubtful morals. On the contrary, the truth is that in the long roll of illustrious men who have approved of divorce being granted for causes other than adultery, we find the names of Luther, Melancthon, Cranmer and Milton, while in modern times Herbert Spencer, George Elliott Howard and Walter F.

Wilcox, foremost in sociology, besides many eminent jurists in this country and in England, have been included among the advocates of easier divorce.

In attempting to forecast the probable divorce law of the future, it may be pointed out that the present tendency is towards the general recognition of various grounds for absolute divorce, such as cruelty, desertion, incompatibility, and for all causes which destroy the home, affect the health and happiness of either party and render true marriage impossible. The general recognition of these grounds for absolute divorce will put an end to the evil conditions resulting from the operation of laws in which adultery constitutes the only cause. It is being realized more than ever that such laws do not redress the mass of private wretchedness arising from other causes—hopeless failures and permanent ruptures of relationship—and thus a host of complicated evils are left actively at work, which tends to lower marriage as an institution in public estimation.

Future divorce legislation, as already suggested, is likely to make some distinction between childless unions and marriages in which children are involved. In cases where no children are concerned and a couple decide to separate, the conviction is growing that it is practically nobody's business what their reasons for separating may be, and the State is not vitally interested in divorces of this character. Therefore, when both parties request the annulment of their marriage contract, any investigation of their reasons by the State appears to be neither desirable nor necessary. It is difficult to conceive of any practical argument which could be made against a grant of free-

dom in such cases, after a suitable delay for the purpose of reflection and confirmation of the desire for it. On this account, divorce by mutual consent is likely to form one of the provisions of the future divorce law.

In advocating this form of divorce, a recent writer has observed that "society is not likely to suffer any mortal wound through the amicable dissolution of marriages which lead at best to constant unhappiness and oftentimes to serious tragedies." It may be instructive on this point to note that in Norway divorce is sensibly defined as "relief from misfortune," and its associations are neither regarded as criminal nor quasi-criminal. To insist on establishing facility of divorce in order that unions shall be real is actually to work in the cause of morality. And it may be added that those countries in which divorce by mutual consent has prevailed longest are probably among the most and not the least moral nations. It is also true that wherever divorce is freest women occupy the highest position.

In discussing this subject, Dr. Havelock Ellis has shown that the modern movement for greater freedom of divorce must eventually tend to reach the goal of separation by the will of both parties or under proper conditions and restrictions by the will of one party. Since marriage, he says, is not made a contract, but a fact of conduct, and even a sacred fact, the very participation of both parties is needed to sustain it. To introduce the idea of delinquency and punishment into divorce, to foster mutual recrimination, to publish to the world secrets of the heart or the senses, is not only immoral, but in this age it is altogether out of place. In the question as to

when a marriage ceased to be a marriage the two persons concerned can alone be the supreme judges. The State, if the State is called in, can but readjust the sentence they pronounce, merely seeing to it that no injustice is involved in carrying out the sentence.

Dr. Ellis has further argued, that as marriage requires the will of two persons and the law insists on that condition, therefore it is logical and just that the law should take the next step involved by the historical evolution of marriage and equally insist that the will of two persons is required to maintain marriage. "It is quite evident," he says, "that from the social and moral points of view it is best when a husband and wife can no longer live together that they should part amicably and in harmonious agreement effect all the arrangements requisite and necessary before separation. At present, most laws ridiculously forbid them to do so, and declare that they must not part at all unless they are willing to pose as enemies. It is the system that is wrong. That system is the legitimate outgrowth of ecclesiastical law which grew up around conceptions long since dead."

Another tendency of modern legislation is towards the removal of restrictions on the remarriage of divorced persons. This is probably due to the increasing recognition of the fact already mentioned which, it would seem, should always have been perfectly obvious, that human passions are the same after as before divorce, and that to prevent remarriage is really to give an excuse for vice. It is also evident that the willingness of divorced persons to remarry indicates that they have no desire to lead immoral lives; and consequently it is difficult to conceive

why any law should attempt to place obstacles in the way of good intentions.

In replying to the usual arguments against the remarriage of the divorced, Bernard Shaw has said: "The inference is that changes of partners are not in themselves injurious or undesirable. People are not demoralized by them when they are effected by law. Therefore we need not hesitate to alter the law merely because the alteration would make such changes easier."

It may be argued that many people take advantage of liberal divorce laws in order to obtain divorce on very slight grounds. But the same argument might be made against the marriage laws, because many people who ought not to marry get married and even evade the laws to accomplish that purpose. As Ellen Key has rightly observed, there are far more frivolous marriages than frivolous divorces, for even the most flighty-minded people realize that divorce is a serious matter.

There are cases, it is true, when opposition may be made by either of the parties, and an element of complication naturally enters, but that does not prevent an equitable solution. Without taking into consideration the reasons or motives for the action of the person seeking freedom from marriage, the mere fact that such freedom is sought should be ample and obvious proof that the contract of marriage has been broken in a sense more important than any specific offense would break it. The important feature is the desire for freedom and not the reasons for the desire. In contested cases the only reasons of importance which could be urged against a severance of the marriage bond would be those presented

by the opposing party, and of these it is difficult to imagine any which the courts could legitimately consider except the single one of support, or means of subsistence. That is, the sole duty of the court would be to secure to a party dependent upon marriage for support the full means of protection which that institution was, in the first place, largely designed to provide.

This naturally brings forward the question of alimony, a subject which has been much discussed and on which there appears to be a great difference of opinion. First, we will consider the position of those childless, economically dependent women who have been trained to regard matrimony as their sole means of obtaining support. In such cases there is undoubtedly a maximum period of personal attraction which must be taken into account. In the event of divorce it would seem only fair that a just compensation should be awarded to wives of this description when their matrimonial record is unblemished. But in cases where marriage has been contracted for mercenary reasons, and in which the wife by her conduct may have brought about the divorce, even though she may be the plaintiff, the courts would be amply justified in restricting the amount of alimony awarded, if, indeed, any were granted.

In considering any reform of the divorce laws, it is essential to bear in mind that the institution of the family, fortified and supported on all sides by various marriage laws, is the only means yet devised which seems capable of securing the birth and development of children up to the high standard of body and mind demanded by modern civilization. Consciously or unconsciously, the

whole effort of the human race is bent towards the production of a posterity which, morally and materially, shall be in some high degree an improvement upon its progenitors. The most apparently discrepant activities, if closely examined, will be found to have this ultimate aim, and it would be useless to devise any means of alleviating the misery of unhappy marriages that did not amply safeguard the interests of the children.

It is universally agreed that in all cases of divorce in which children are involved, their maintenance and proper education should be fastened on the parents to the last degree, and unless it could be clearly shown that such provision would be made, the State should undertake the work of maintenance and education, charging one of the parents or both with the resulting expense. While this responsibility usually rests upon the father, there are instances in which it should be shared by the mother, and in every case no shirking of parental duties should be tolerated.

This phase of the divorce question is undoubtedly one of the most serious, and upon it the opponents of divorce have based many of their arguments. It may be pointed out, however, that investigation has shown that in two out of every five divorce cases tried in the United States, in recent years, there were no children concerned, while, in most of the others, the courts were obliged to admit that divorce was not only desirable, but that the children were much better off in the care of one parent than to be reared amidst scenes of strife. It has been recognized that where mutual exasperation exists between husband and wife, with an equal desire for annulment of the

marriage, the influence is decidedly bad, and that home with an atmosphere of contention is worse than none for the child. The spectacle of grievances and quarrels is demoralizing to children and it is usually fatal to any respect for their parents. One effective parent, moreover, is undoubtedly far better for the child than two ineffective parents. In such cases all that society can do is to provide for the proper upbringing of the children under the best possible conditions.

Investigation, furthermore, has shown that only in comparatively few cases have children suffered through divorce. It is asserted, it is true, that between 25 and 50 per cent. of the children in reform schools have been sent to such institutions because of the separation of their parents, usually of the poorer classes. But this fact cannot logically support an argument against divorce. The probabilities are that such children are better off in State institutions than if they were reared amidst scenes of strife, squalor and vice.

Among other arguments made against divorce is the assertion that restrictive laws, and the granting of judicial separations instead of absolute decrees, give unhappily married couples an opportunity for reconciliation. Such an argument, however, is not supported by the facts, for the records of most courts have shown that in comparatively few cases have reconciliations been effected after judicial separations have been granted. All evidence seems to show that when once the natural bond has been destroyed, neither the operation of restrictive laws nor efforts at reconciliation can restore the basis of true marriage. No power, legal or otherwise, can pos-

sibly make a dead relationship live again, transform hatred into love, misery into happiness or distrust into faith.

At a time when so much is being said about divorce law reform and the establishment of some standard of uniformity throughout the United States, the facts revealed by the study of conditions in New York and Nevada should be of particular interest. As these facts have shown, the evils produced by a restrictive law, such as exists in New York, are infinitely greater than have arisen under a liberal law such as that of Nevada. Under the New York law, as under the English law, we find that perjury, blackmail, collusive adultery and other immoralities are the direct results of the present restrictions on divorce.

The New York law, it may be added, was selected for discussion not only because it represents some of the worst aspects of a restrictive divorce law, but in order that attention might be called to the difficulty, and even the utter impossibility, of introducing any reform. As explained in the chapter on the New York law, a persistent effort has been made for several years, to induce the New York Legislature to approve the model law drafted by the Congress on Uniform Divorce—a law already adopted by three States—but, thus far, no action whatever has been taken. Yet in spite of this fact, not a single newspaper has ventured to comment on this lack of needed legislation, or endeavored to arouse public interest in this subject.

For this inaction on the part of the press and the politicians several reasons could be given, but probably

the most influential is the fear that any attempt to amend the divorce law would excite the antagonism of certain churches opposed to reform. In other words, the politicians are afraid of losing votes; the newspapers fear the loss of circulation and advertising. It is undoubtedly owing to this lack of comment on the part of the newspapers that widespread ignorance exists in New York State concerning the provisions of the divorce law, many people apparently having the idea that the law permits absolute divorce to be obtained on various grounds.

Ignorance of the scope of State divorce laws, it may be added, is not altogether confined to citizens of New York. That it exists elsewhere became evident, not long ago, when certain English bishops protested against the more liberal divorce law recommended by a majority of the English Divorce Commission. Using this country as a "horrid example," they described divorce conditions in the United States generally as scandalous, quite oblivious of the fact that restrictive laws exist in some States. One British clergyman even declared indignantly that "English traditions of legal procedure and respect for the law are happily not those of Dakota, Nevada and New York where the laws permit divorce to be obtained on various frivolous grounds."

On the other hand, several New York judges, who were interviewed by the newspapers, expressed great satisfaction in regard to the success of divorce law reform in England. They agreed in condemning the present English law as out-of-date and barbarous, but very little was said by any of them in regard to an equally barbarous feature of the present divorce law of their own State.

What has been said about the New York divorce law, however, applies with equal force to all similar laws and, as already remarked, the evils resulting from their restrictions should be a warning to States having liberal laws and prevent them from embarking on any reactionary legislation.

As to the desirability of a uniform divorce law there is, as we have seen, a great difference of opinion. There are some lawyers of eminence who believe that each State should be left unhampered in matters of divorce, and that the operation of various laws will eventually prove invaluable in showing actual results, whereas any model law, based on mere theory, would be less satisfactory. There are also objections to a Federal law, not only because it would be an infringement of State rights, but because public opinion on the divorce question is much divided at the present time. There is, in fact, as much difference of opinion among decent people as among the indecent or half-way decent. One decent man, for example, is opposed to divorce except for adultery, while another man, equally decent, is in favor of divorce by mutual consent. Between these extremes decent men of every shade of opinion will be found. Furthermore, while in some States religious and political influences are sufficiently strong to maintain restrictive laws, in others liberal divorce laws meet with general approval. In these circumstances, a Federal law could not fairly represent the views of all the people, and for this reason it would seem that the only possible way in which uniformity could be reached is by a conference of all the States with a view to reaching an agreement.

In a previous chapter it was shown that in European countries State control of marriage and divorce has been gained in the face of bitter opposition on the part of certain churches. While in this country, owing to the separation of church and State, a similar opposition was not encountered, nevertheless there is every evidence that ecclesiastical influences have been exerted among our law-makers. When, for example, attempts have been made to amend restrictive divorce laws or to reform the marriage laws in certain ways, such legislation has invariably met with bitter opposition from churches which forbid their members to obtain divorce and also prohibit the remarriage of divorced persons. This interference has been criticized by other churches which regard marriage as a purely civil institution and approve of legitimate divorce. A reference to preceding chapters, it may be added, will show that a wide difference of opinion on these subjects exists among the various religious bodies.

There would be less reason for criticizing the attitude of the ultra-conservative churches if they enforced their doctrines only on their own members, but in their efforts to influence legislation they clearly infringe on the rights of others. It was on this point that an eminent American jurist has declared that "certain churches may properly set up their rules of marriage and divorce for their own members, but they must not assail or threaten the rights of outsiders."

In the present controversy on the divorce question, it is difficult to understand the opposition which has been made by the Church of England to the proposed new English divorce law, for even at the present time there is a

great difference of opinion among some of its own clergy. Moreover, as already pointed out, Archbishop Cranmer, one of the founders of the English state church, strongly advocated the enactment of a liberal divorce law. Strangely enough the reforms proposed by a majority of the English Divorce Commission practically agree with the recommendations made by Archbishop Cranmer nearly three hundred years ago. The Commission has also declared that a reasonable meaning must be given to the expression in the marriage vow "for better or worse," and that it does not contemplate the continuance of the relationship becoming impossible, the joint life determined, and the objects of marriage being wholly frustrated.

Having considered the drift of public opinion on the divorce question and the facts concerning the increase of divorce, its causes and remedies, a review of the evidence presented leads to the following conclusions:

I. There is a growing recognition of the principle that when the natural bond ceases true marriage ends.

II. Consequently, it is being increasingly recognized that divorce should be granted on all reasonable grounds, including any "conduct rendering life intolerable," and whenever possible divorce by mutual consent should be permitted.

III. The enlightened thought of the age is strongly opposed to judicial separations as a substitute for absolute divorce.

IV. There is also a growing demand for the abolition of all restrictions on the remarriage of divorced persons.

V. Among the probable reforms of the future are the following: The absolute equality of the sexes in divorce proceedings; equal rights for all classes, the cost of divorce being placed within the reach of even the poorest citizen, and even actions *in forma pauperis* being permitted. All divorce cases to be heard privately and the facts—which interest only the parties concerned—to be withheld from the newspapers.

VI. Divorce to be regarded less seriously in the cases of childless couples than in those in which children are involved—due to the recognition of the fact that the welfare of children is the one important matter with which society is concerned.

From the evidence that has been presented it is clear that divorce is not in itself a disease, but is a remedy for a disease, or for certain social defects and conditions which further progress will sweep away. It is also clear that the increase of divorce is, in reality, a healthy sign, proving, as it does, that people have become less tolerant of evils which were once endured and for which divorce is the only remedy. As already observed, divorce will undoubtedly continue its upward movement until the world adjusts itself to new social conditions, and, it may be added, that its decrease will be effected whenever moral conduct begins to conform more closely to improved moral ideals. Until this condition is reached not only will the

growth of divorce continue, but marriage will be avoided by an increasing number of people who find that a happy single life is preferable to the risks of a possibly unhappy marriage. This applies especially to a host of unmarried women of high intelligence concerning whom a recent writer has said: "The higher the standard which on eugenic principles, natural or acquired, women exact of the men they marry, the greater, most certainly, will be the number of women who remain unmarried."

It is a remarkable fact that most of the advanced women writers of the present day are strongly in favor of liberal divorce laws, and are foremost in advocating reforms which are designed to place marriage on a higher basis. On the other hand, the bitterest opponents of these reforms are usually men, and so noticeable is this, that one is inclined to agree with H. G. Wells that the typical censor of public morals is not a woman, Mrs. Grundy, but a man, Mr. Grundy—a reactionary busybody, who opposes every new and wholesome movement.

As the result of this reactionary spirit, many people refuse to read about the problems of marriage and divorce or even to discuss them. This applies especially to large numbers of comfortably married people governed by conventional ideas. Most of them possibly take little interest in the problems of the wretchedly married; for too many people, unfortunately, are notoriously indifferent to forms of misery unknown to themselves or unlikely to affect themselves. Consequently, to such people, as a rule, the whole subject of marriage evils and divorce remedies seems offensive, and they have an impression, apparently, that no good can be effected by instituting re-

forms. It may be recalled that the citizens of Madrid, in the eighteenth century, are recorded to have fiercely combated a daring proposal to clean the streets of that city, because the concentrated refuse was supposed to temper the austerities of the climate. There are undoubtedly people in the world to-day who oppose the abolition of certain evil conditions affecting marriage and divorce on the sole ground that these conditions form one great safeguard of public morals.

As the facts have shown, in the United States and in all other civilized countries, the effects of social progress have not only caused an increase in divorce and resulted in the enactment of liberal divorce laws, but new conditions have also brought about changes in the marriage laws. Checks are being placed on hasty, unwise marriages and qualifications for marriage have been established in order to prevent the union of the unfit. As in this country, wherever liberal laws have been introduced the divorce rates have immediately increased. Investigation, however, has shown that this rapid increase is only of a temporary character and has been caused by those who have taken advantage of new opportunities of freedom, thousands possibly having waited for years to obtain divorce in order to remarry. Figuratively speaking, the gate is opened and the crowd surges in, but after a few years the rates decrease. This has been the case in France, Germany, New Zealand, New South Wales and other countries, and it has also been observed in our own Western States.

Much is heard in these days in regard to the "divorce evil" of the United States, but one of the greatest authori-

ties on American conditions, James Bryce, author of the American Commonwealth, has taken a thoroughly sound view of the present situation. In discussing the growth of divorce in this country he has said: "The morality of a country is not to be measured by the number of divorces, for its conditions might be really worse if people abstained from obtaining divorces when there are grounds for obtaining them." Experience, in fact, has taught that when social causes are not in themselves evil, but are the results of social transitions which are leading to an improvement in general conditions, they are not likely to be permanent. Consequently, any attempts to remedy the underlying causes of divorce by enacting restrictive laws are destined to end in failure. The only proper point to begin the work of reform is in moral education and a development of all means of social welfare through which the home and the family may be adjusted to modern conditions.

In spite of certain reactionary views that are being expressed, it seems certain that eventual modifications in marriage, coupled with greater freedom in divorce, will have no destructive effect on the family of the future or interfere with the performance of its highest functions in perpetuating and educating the race. The real foundations of the ideal marriage and the family, to quote an eminent sociologist, are far too strongly laid to be undermined, although certain conventional features of the matrimonial structure which have become unsuited to modern conditions may eventually be discarded. "Therefore, the monogamous union—the result of ages of evolution—is destined to survive, and with equal rights and

privileges for husbands and wives, the removal of sex dependence, and the establishment of higher standards in matrimonial life, the indissoluble marriage, freed from all compulsion and dependent upon mutual choice, will ultimately become actual as well as theoretical."

The present social upheavals that are bringing about changes in ideas and conditions, disturbing though they may be, have not, after all, changed the basic elements upon which the successful marriage must rest. Social progress is transforming the home and giving rise to some radical views on the marriage relation, but the desires and aspirations which combine to make up the true marriage will remain unaltered. As Miss Tarbell has well said: "The human heart does not change. It demands its mate, always has and always will; and the mated will find a corner to themselves, where they can sit by their own fireside and rear their brood. Their corner may be a flat and not a cottage, their fire may be a gas-log, and not a bundle of sticks, their dinner may come in from the corner store in cans, and be heated instead of cooked; the wife may vote, and the husband may give himself a score of liberties an earlier generation would have frowned on, but what has all that to do with the foundations of life? These are the fluctuations in ways and expressions which each generation surely brings." While, therefore, conservative opinion is inclined to regard innovations in marriage and the progress of divorce as positive evidence that the world is retrograding, those who take the liberal side of the argument are able to view present conditions and possible future results with a high degree of optimism.

All social transitions are disturbing, and the widespread dissatisfaction which is manifested, at the present time, in regard to certain features of marriage and divorce indicates that the civilized world is not content to leave things as they are. Huxley once said that if the present level of human life were to show no rising in future, he would welcome a kindly comet that should sweep the whole thing away. The dogma of convention, as Ellen Key has observed, is, that man was made once for all; but the evolutionists are discovering that he is still in process of becoming; that he is neither fallen nor perfect, but capable of perfection. Even a brief comparison of past and present conditions is an incentive to optimism. An examination of conditions a hundred years ago will show us that they were tenfold worse than to-day when legions of men and women are working for human betterment.

This is an altruistic and high-thinking age, in spite of the dark spots which still exist. The very fact that earnest attempts are being made to raise marriage and free it from all that degrades it, to increase the happiness of men and women who enter married life, and to improve the quality of coming generations through eugenic and other movements, is encouraging and inspiring. In the revolution, which has progressed for half a century, woman's position has been wonderfully advanced and has fitted her to perpetuate the race in its best elements. Moral and intellectual standards have risen and comfort has increased. If fewer children have been born, they are better cared for, since with the decrease in the birth rate the death rate has also decreased, and within forty

years the "expectation of life" has been lengthened by a decade at the period of its greatest usefulness. Even this brief summary affords ample evidence that mankind is not only determined to rise to a higher level, but to overcome those evils which are the direct results of the sins and mistakes of the past.

In the intent of nature, it has been eloquently said, nothing apparently is worth while but the coming race. The past and present generations of mankind have been only experiments through which nature has been preparing to breed the magnificent race of the future. Thus it is that with each advance ideas and even moralities undergo a transformation.

"The old order changeth, yielding place to new,
And God fulfills Himself in many ways,
Lest one good custom should corrupt the world."

All our cities must be gradually rebuilt; all our theories must be unravelled that they may be rewoven in a truer form; all our faiths must be attacked and revised in order that truer, purer faiths may take their place. Change is not necessarily harmful or immoral, and this is true of the changes in marriage that have been made and are still in process of remaking, including also the freedom of divorce.

Even if marriage as it exists to-day were completely abolished, it is improbable that any very disastrous results, either morally or socially, would follow. It is certainly incredible that any change is even dimly possible which would substitute for our present conceptions of morality and happiness something not in every sense an

improvement. Evolution oftentimes means revolution, but the onward march of the human intellect is incapable of sacrificing any good which has been gained or of retracing a single step forward. Therefore those concerned with the moral aspects of the present unrest have only to take a more comprehensive view of this subject to be assured that conventional institutions can only disappear with the advent of other institutions, which, while preserving all the good that is in the old, will bring through the new an enhancement of existence far beyond anything at present achieved.

'APPENDIX

SUMMARY OF THE MARRIAGE LAWS OF THE UNITED STATES

PROHIBITED MARRIAGES

Under existing statutes, marriages between whites and persons of negro descent are forbidden and punishable in Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, North Carolina, South Carolina, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia and West Virginia. Marriages between whites and Indians are void in Arizona, North Carolina, South Carolina and Oregon; and between whites and Chinese in Arizona, California, Mississippi, Oregon, and Utah.

Marriage between first cousins is forbidden in Alaska, Arizona, Arkansas, Illinois, Indiana, Kansas, Missouri, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Washington, and Wyoming. Some of these States have declared such marriages to be incestuous and void. Marriage with step relatives is forbidden in all the States except Florida, Iowa, Kentucky, Minnesota, New York, Tennessee and Wisconsin.

Connecticut and Minnesota prohibit the marriage of an epileptic, imbecile or feeble minded woman under 45 years of age, or cohabitation by any male of this description with a woman under 45 years of age. Marriage of lunatics is void in the District of Columbia, Kentucky, Maine, Massachusetts and Nebraska. The marriage of persons having sexual diseases is prohibited in Michigan and Wisconsin.

MARRIAGEABLE AGE

At the present time the age at which a valid marriage can be contracted varies in different States, the lowest statutory age for a male being fourteen. The States in which a marriage can be contracted by a male at fourteen are Kentucky, Louisiana, New Hampshire and Virginia. The States in which the statutory limit is fifteen years are Kansas and Missouri. Those in which it is sixteen are the District of Columbia, Iowa, North Carolina, Texas and Utah. Those in which it is seventeen years are Alabama, Arkansas and Georgia, while those in which it is eighteen are Arizona, California, Delaware, Idaho, Illinois, Indiana, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, West Virginia, Wisconsin and Wyoming.

For females the lowest statutory age at which a valid marriage can be contracted is twelve years. The States in which the statutory limit of twelve is in force are Kansas, Kentucky, Louisiana, Missouri and Virginia. In New Hampshire the statutory limit is thirteen years. In the following States fourteen is the limit: Alabama, Arkansas, District of Columbia, Georgia, Iowa, North Carolina, Texas and Utah. The States in which fifteen is the statutory limit are: California, Minnesota, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota and Wisconsin. Sixteen years is the limit in Arizona, Delaware, Illinois, Indiana, Michigan, Montana, Nebraska, Nevada, Ohio, West Virginia and Wyoming. The statutory limit in New York is eighteen. In States in which no minimum marriageable age is given the provisions of the common law are recognized.

PARENTAL CONSENT

The age below which parental consent is required for the marriage of a male is twenty-one years in nearly all the States and Territories. In Tennessee it is sixteen years, and in Idaho

and North Carolina eighteen years. No limit has been established in Georgia, Michigan, New Hampshire, New York and South Carolina. In all the other States and Territories not mentioned it is twenty-one years. In the case of females the age below which parental consent is required is sixteen years in Maryland and Tennessee; twenty-one years in Connecticut, Florida, Kentucky, Louisiana, Pennsylvania, Rhode Island, Virginia, West Virginia and Wyoming. No statutory limit is established in New Hampshire, New York and South Carolina. In all the other States and Territories not mentioned it is eighteen years.

VALID MARRIAGE

Marriage licenses are required in all the States; common-law marriages are not legal in any State. The statutes in force in many States which provide that irregularities do not invalidate an otherwise lawful marriage are not considered to include common-law marriages. On the other hand, those statutes which prescribe certain formalities but provide for no penalty for disobedience are directory, not mandatory, and do not invalidate a marriage.

MARRIAGES IN OTHER STATES OR FOREIGN COUNTRIES

The rule of law is that a marriage, valid where celebrated, is valid everywhere. The exceptions to this are marriages contrary to the law of nations, or contrary to the laws or policy of a particular State, and marriages in evasion of or fraud upon the laws of the domicile of the parties. A marriage invalid where celebrated is generally invalid anywhere, with the exception of a marriage in a place where the local law provides no way in which the parties can validly marry.

The general rule as to the recognition of marriages performed in foreign countries is to recognize them as valid if they were performed in accordance with the laws of the country wherein they were celebrated, and if each party was com-

petent to marry in accordance with the laws of the country of which he was a citizen.

It is a general rule of law that the domicile of the wife follows that of the husband.

MARRIAGE LEGALLY DEFINED

Marriage has been legally defined by eminent legal authorities as either a contract or a status and relation growing out of that contract. As the former it is defined, under the modern doctrine, as a civil contract to which is essential the consent of parties capable of contracting, given according to the forms prescribed by law, if any are required. As the latter, it is the civil status or personal relation of one man and one woman, united by contract and mutual consent for their joint lives, to discharge toward each other and the community the duties imposed by law on the relation of husband and wife.

The element of contract is important at the inception of marriage in establishing the relation. When once established, however, this relation is a matter of public concern, and the parties cannot terminate, dissolve or modify their contract by any subsequent agreement. The rights and obligations arising out of the relation are fixed by law.

Among other standard definitions are the following:

"Marriage is a contract made in due form of law, by which a man and woman reciprocally engage to live with each other during their joint lives, and to discharge toward each other the duties imposed by law on the relation of husband and wife."
—Bouvier's Law Dictionary.

"Marriage, as distinguished from the agreement to marry and from the act of becoming married, is the civil status of one man and one woman legally united for life, with the rights and duties which for the establishment of families and the multiplication and education of the species are, or from time to time may thereafter be, assigned by law to matrimony."—Bishop on Marriage, Divorce and Separation.

APPENDIX

473

SUMMARY OF THE DIVORCE LAWS OF THE UNITED STATES.

STATES.	Residence Required.	Causes for Absolute Divorce. <i>In addition to adultery, which is cause for divorce in all the States.*</i>
Alabama.....	1-3 yrs.	Abandonment two years, crime against nature, habitual drunkenness, violence, pregnancy of wife by other than husband at marriage, physical incapacity, imprisonment for two years for felony, if husband becomes addicted to cocaine, morphine or similar drugs.
Alaska.....	3 years.	Felony, physical incapacity, desertion two years, cruelty, habitual drunkenness.
Arizona.....	1 year.	Felony, physical incapacity, desertion one year, excesses, cruelty, neglect to provide one year, pregnancy of wife by other than husband at marriage, conviction of felony prior to marriage unknown to other party, habitual drunkenness.
Arkansas.....	1 year.	Desertion one year, felony, habitual drunkenness one year, cruelty, former marriage existing, physical incapacity.
California.....	1 year.	Cruelty, desertion one year, neglect one year, habitual drunkenness one year, felony.
Colorado.....	1 year.	Desertion one year, physical incapacity, cruelty, failure to provide one year, habitual drunkenness one year, felony, former marriage existing.
Connecticut....	3 years.	Fraudulent contract, wilful desertion three years, with total neglect of duty, habitual drunkenness, cruelty, imprisonment for life, infamous crime involving violation of conjugal duty and punishable by imprisonment in State prison, seven years' absence without being heard from.
Delaware.....	2 years.	Desertion two years, habitual drunkenness for two years, cruelty, bigamy, felony followed by a continuous imprisonment for at least two years—and at the discretion of the Court, fraud, want of age, neglect to provide three years.
D. of Columbia.	3 years.	Marriages may be annulled for former existing marriage, lunacy, fraud, coercion, physical incapacity, and want of age at time of marriage.
Florida.....	2 years.	Cruelty, violent temper, habitual drunkenness, physical incapacity, desertion one year, former marriage existing, relationship within prohibited degrees.
Georgia.....	1 year.	Mental and physical incapacity, desertion three years, felony, cruelty, force, duress, or fraud in obtaining marriage, pregnancy of wife by other than husband at marriage, relationship within prohibited degrees.
Hawaii.....	2 years.	Desertion one year, felony, leper, cruelty, habitual drunkenness.
Idaho.....	6 mos.	Cruelty, desertion one year, neglect one year, habitual drunkenness one year, felony, insanity.
Illinois.....	1 year.§	Desertion two years, habitual drunkenness two years, former existing marriage, cruelty, felony, physical incapacity, attempt on life of other party, divorced party cannot marry for one year.
Indiana.....	2 years.	Abandonment two years, cruelty, habitual drunkenness, failure to provide two years, felony, physical incapacity.
Iowa.....	1 year.	Desertion two years, felony, habitual drunkenness, cruelty, pregnancy of wife by other than husband at marriage, unless husband has illegitimate child or children living of which wife did not know at time of marriage. The marriage may be annulled for the following causes existing at the time of the marriage: Insanity, physical incapacity, former existing marriage, consanguinity.

* Exclusive of South Carolina, which has no divorce law.

§ Not required for offence within State.

STATES.	Residence Required.	Causes for Absolute Divorce. <i>In addition to adultery, which is cause for divorce in all the States.¹</i>
Kansas.....	1 year.	Abandonment one year, cruelty, fraud, habitual drunkenness, gross neglect of duty, felony, physical incapacity, pregnancy of wife by other than husband at marriage, former existing marriage.
Kentucky.....	1 year.	Separation five years, desertion one year, felony, physical incapacity, loathsome disease, habitual drunkenness one year, cruelty, force, fraud or duress in obtaining marriage, joining religious sect believing marriage unlawful, pregnancy of wife by other than husband at marriage or subsequent unchaste behavior, ungovernable temper.
Louisiana.....	.....	Felony, habitual drunkenness, excesses, cruelty, public defamation of other party, abandonment, attempt on life of other party, fugitive from justice.
Maine.....	1 year.	Cruelty, desertion three years, physical incapacity, habits of intoxication by liquors, opium, or other drugs, neglect to provide, insanity under certain limitations.
Maryland.....	2 years.	Abandonment three years, unchastity of wife before marriage, physical incapacity, any cause which renders the marriage null and void <i>ab initio</i> .
Massachusetts..	3-5 yrs.	Cruelty, desertion three years, habits of intoxication by liquors, opium or other drugs, neglect to provide, physical incapacity, imprisonment for felony, uniting for three years with religious sect believing marriage unlawful.
Michigan.....	1 year.	Felony, desertion two years, habitual drunkenness, physical incapacity, and in the discretion of the Court for cruelty or neglect to provide.
Minnesota.....	1 year.	Desertion one year, habitual drunkenness one year, cruelty, physical incapacity, imprisonment for felony.
Mississippi.....	1 year.	Felony, desertion two years, consanguinity, physical incapacity, habitual drunkenness by liquor, opium, or other drugs, cruelty, insanity at time of marriage, former existing marriage, pregnancy of wife by other than husband at marriage.
Missouri.....	1 year.	Felony, absence one year, habitual drunkenness one year, cruelty, indignities, vagrancy, former existing marriage, physical incapacity, conviction of felony prior to marriage unknown to other party, wife pregnant by other than husband at marriage.
Montana.....	1 year.	Cruelty, desertion, neglect one year, habitual drunkenness one year, felony, innocent party may not remarry within two years and guilty party within three years of the divorce.
Nebraska.....	1 year. †	Abandonment two years, habitual drunkenness, physical incapacity, felony, failure to support two years, cruelty.
Nevada.....	6 mos. §	Desertion one year, felony, habitual drunkenness, physical incapacity, cruelty, neglect to provide one year.
N. Hampshire..	1 year.	Cruelty, felony, physical incapacity, absence three years, habitual drunkenness three years, failure to provide three years, treatment endangering health or reason, union with sect regarding marriage unlawful, wife separate without the State ten years, not claiming marital rights, husband absent from United States three years intending to become citizen of another country without making any provision for wife's support.

* Exclusive of South Carolina, which has no divorce law.

† Two years for cases arising out of the State.

§ Unless both parties reside in the State at time cause of divorce accrues.

STATES.	Residence Required.	Causes for Absolute Divorce. <i>In addition to adultery, which is cause for divorce in all the States.*</i>
New Jersey....	2 years.	Desertion two years, cruelty. No divorce may be obtained on grounds arising in another State unless they constituted ground for divorce in the State where they arose. The marriage may be annulled for the following causes existing at the time of the marriage: Want of legal age, former existing marriage, consanguinity, physical incapacity, idiocy.
New Mexico....	1 year.	Abandonment, cruelty, neglect to provide, habitual drunkenness, felony, physical incapacity, pregnancy of wife by other than husband at marriage.
New York....	(‡)	Adultery only. The marriage may be annulled for such causes as rendered the relationship void at its inception.
N. Carolina....	2 years.	Pregnancy of wife by other than husband at marriage, physical incapacity, husband and wife living apart for ten years and having no issue.
North Dakota..	1 year.	Cruelty, desertion one year, neglect one year, habitual drunkenness one year, felony. The marriage may be annulled for the following causes existing at the time of the marriage: Former existing marriage, insanity, physical incapacity, force or fraud inducing the marriage, or want of age.
Ohio.....	1 year.	Absence three years, cruelty, fraud, gross neglect of duty, habitual drunkenness three years, felony, former existing marriage; procurement of divorce without the State by one party, which continues marriage binding upon other party; physical incapacity.
Oklahoma.....	1 year.	Abandonment one year, cruelty, fraud, habitual drunkenness, felony, gross neglect of duty, physical incapacity, former existing marriage, pregnancy of wife by other than husband at marriage.
Oregon.....	1 year.	Felony, habitual drunkenness one year, physical incapacity, desertion one year, cruelty or personal indignities rendering life burdensome.
Pennsylvania...	1 year.	Former existing marriage, desertion two years, personal abuse or conduct rendering life burdensome, felony, fraud, relationship within prohibited degrees, physical incapacity and lunacy.
Rhode Island...	2 years.	Cruelty, desertion five years, habitual drunkenness, excessive use of morphine, opium, or chloral, neglect to provide one year, gross misbehavior, living separate ten years, physical incapacity. Either party civilly dead for crime or prolonged absence. The marriage may be annulled for causes rendering the relationship originally void or voidable.
S. Carolina....	.....	No divorces granted.
South Dakota..	1 year.	Cruelty, desertion one year, neglect one year, habitual drunkenness one year, felony. The marriage may be annulled for the following causes existing at the time of the marriage: Want of age, former existing marriage, insanity, physical incapacity, force or fraud inducing marriage.
Tennessee.....	2 years.	Former existing marriage, desertion two years, felony, physical incapacity, attempt on life of other party, refusal of wife to live with husband in the State and absenting herself two years, pregnancy of wife by other than husband at marriage; at the discretion of the Court for cruelty, indignities, abandonment, or neglect to provide, habitual drunkenness.

* Exclusive of South Carolina, which has no divorce law.

† Actual residence.

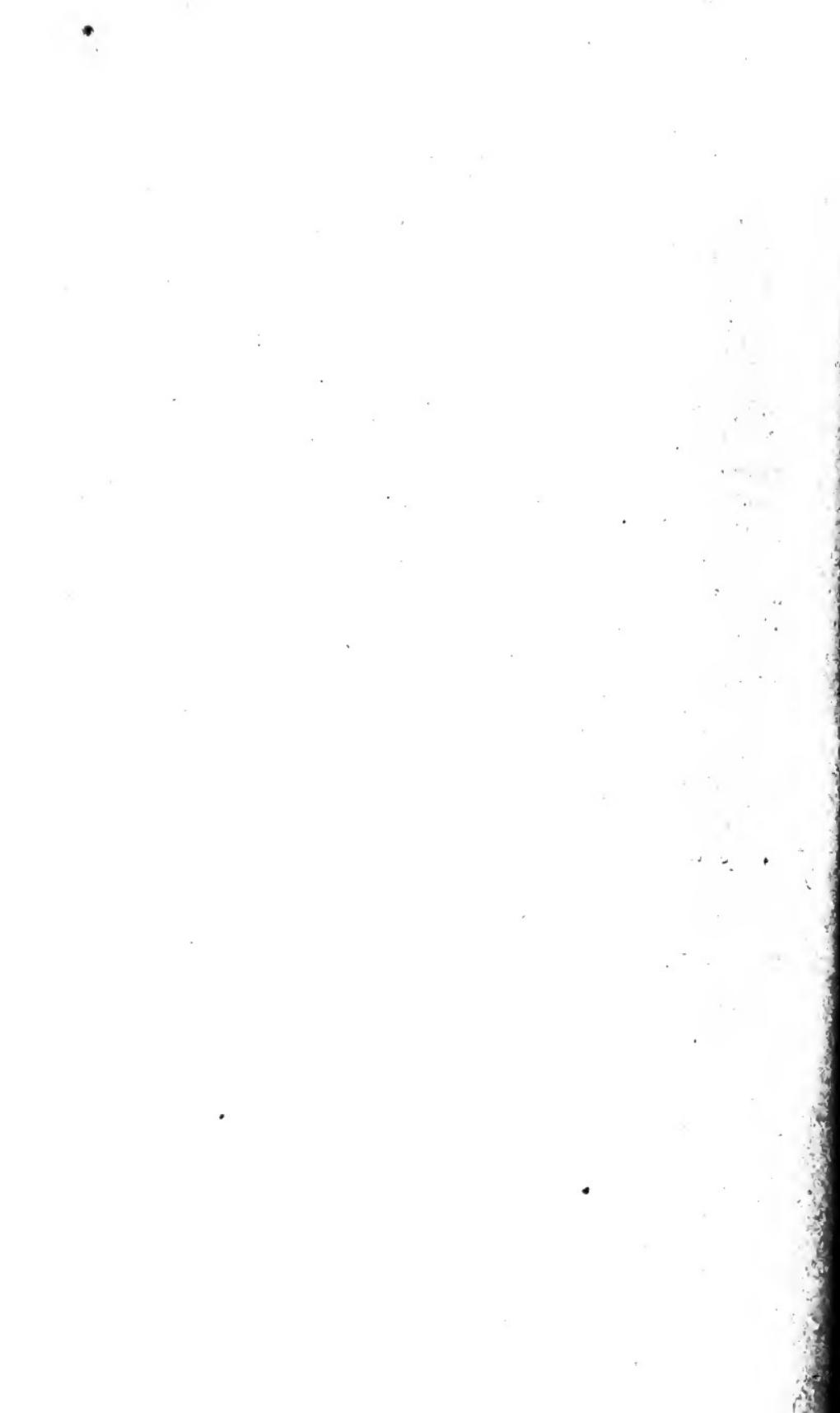
STATES.	Residence Required.	Causes for Absolute Divorce. <i>In addition to adultery, which is cause for divorce in all the States.*</i>
Texas.....	6 mos.	Abandonment three years, physical incapacity, cruelty, excess, or outrages rendering life together insupportable, felony.
Utah.....	1 year.	Desertion one year, physical incapacity, habitual drunkenness, felony, cruelty, permanent insanity.
Vermont.....	1 year.	Imprisonment three years, intolerable severity, desertion three years, neglect to provide, absence seven years without being heard from.
Virginia.....	1 year.	Insanity at marriage, felony, desertion three years, fugitive from justice two years, pregnancy of wife by other than husband at marriage, wife a prostitute, or either party convicted of felony before marriage unknown to other, physical incapacity.
Washington....	1 year.	Abandonment one year, fraud, habitual drunkenness, refusal to provide, felony, physical incapacity, incurable insanity, cruelty or indignities rendering life burdensome, other cause deemed sufficient by the Court.
West Virginia...	1 year.	Desertion three years, felony, physical incapacity, pregnancy of wife by other than husband at marriage, husband a licentious character or wife a prostitute unknown to other party, either party convicted of felony before marriage unknown to other. The marriage may be annulled for the following causes existing at the time of the marriage: Former existing marriage, consanguinity, insanity, physical incapacity, miscegenation, want of age.
Wisconsin.....	1 year.	Felony (imprisonment three years), desertion one year, cruelty, physical incapacity, habitual drunkenness one year, separation five years. In the discretion of the Court for cruelty or neglect to provide. The marriage may be annulled for the following causes existing at the time of the marriage: Want of age, or understanding, consanguinity, force or fraud inducing marriage; where marriage was contracted with former marriage existing the second marriage is void without any divorce proceedings.
Wyoming.....	1 year.	Felony, desertion one year, habitual drunkenness, cruelty, neglect to provide one year, husband a vagrant, physical incapacity, indignities rendering condition intolerable, pregnancy of wife by other than husband at marriage, either party convicted of felony before marriage unknown to other. The marriage may be annulled for the following causes existing at the time of the marriage: Want of age, force or fraud. The marriage is void without divorce proceedings, consanguinity, insanity, former existing marriage.

* Exclusive of South Carolina, which has no divorce law.

DIVORCE LEGALLY DEFINED

"Divorce is the dissolution or partial suspension, by law, of the marriage relation. The dissolution is termed divorce from the bonds of matrimony, or, in the Latin form of the expression, *a vinculo matrimonii*; the suspension, divorce from bed and board, *a mensa et thoro*. The former divorce puts an end to the marriage; the latter leaves it in full force. The term 'divorce' is sometimes also applied to a sentence of nullity, which establishes that a supposed or pretended marriage either never existed at all, or at least was voidable at the election of one or both of the parties."—Bouvier's Law Dictionary.

In popular usage the term "absolute divorce" is usually applied to divorce from the bonds of matrimony, while divorces from bed and board are called limited divorces or judicial separations.



GENERAL INDEX

THE NAMES OF AUTHORS WHOSE WORDS OR WORKS ARE QUOTED ARE
PRINTED IN SMALL CAPITALS.

- Affinities, 71, 74, 390
Alimony, 147, 150, 152, 197, 259,
301
ALLEN, GRANT, problem novels,
90
- BARNES, PROF. EARL, 104, 365
BEBEL, AUGUST, 88
BENNETT, ARNOLD, 304
Bigamy, 191, 218, 293, 303
Birth rate, decline of, 26, 320,
321
Breach of promise, 419
- Children of the separated or di-
vorced, 146, 166, 214, 294, 308,
340, 366, 372, 454; children
among the poor, 214, 220, 319
Childless marriage, the, 26, 321,
437, 449
Churches and divorce, 282, 370,
373, 379
Churches and marriage, 365, 398
Clafin, Tennessee, 57
Conservatism, 3, 14, 28, 41, 92,
288, 343, 346, 439
Courtship, supervision of, 415
Cruelty, in divorce statutes, 142,
144, 147; mental, 230, 232
Czarina of Russia on love, mar-
riage and divorce, 333
- Divorce, in United States, 119;
statistics, 122; foreign rates
compared, 129; growth of,
131; geographical variations,
132, 148, 154; remarriage
after, 139, 163, 171, 176, 239,
312, 368, 369, 451; men and
women plaintiffs, 122, 145; so-
cial elements in, 149; causes
of, 141, 153, 167, 232; laws,
162, 176, 258, 276, 292, 316,
350; collusion in, 188, 232;
conflicting decrees of, 177, 198,
240; PROCTOR, 158, 165; law-
yers, 184, 233; detectives, 187;
freedom of, 5, 436; ecclesiasti-
cal opposition to, 197, 272,
277, 312, 338, 457, 459; by
mutual consent, 449
- Dakota, former divorce colony,
122
- Desertion, an increasing cause of
divorce, 142, 144, 218, 222
- Domestic Relations Courts, 202
et seq., 213, 224, 374
- DORR, RHETA CHILDE, 50, 375,
428
- ELLIS, DR. HAVELOCK, 93, 121,
269, 425, 450
- England, divorce problems in,
287
- Eugenics, 310, 391, 400
- EULALIE, THE INFANTA, 344
- Europe, continental, divorce in,
318, 323, 325, *et seq.*
- Family, the, 256, 261, 461; life,
20
- Families, large or small? 60,
429, 443
- Free love, 9, 66, 84, 86, 303

- Future, the marriage of the, 423, 441; home, 422; divorce law, 430
- GIBBONS, CARDINAL, on divorce, 273
- GILMAN, CHARLOTTE PERKINS, 111, *et seq.*
- Gretna Greens, 175, 377, 443
- Home, the, changes in, 20, 154, 430
- HOWARD, PROF. GEO. ELLIOTT, 151, 155, 447
- HOWARD, DR. W. L., 384
- Husband, the ideal, 97
- Husbands, defects of, 105, 107, 159
- IBSEN, HENRIK, 65-69, 337
- Indecent divorce procedure, 304
- Individualism, effects of, 20, 121, 262
- Infidelity, cause for divorce, 80, 100, 143, 183, 190, 193, 304
- Intemperance and the divorce rate, 143, 145, 157, 364
- Incompatibility cause for divorce, 383, 387
- Jesus, declarations concerning divorce, 262
- Judicial separation, an unsatisfactory remedy, 233, 276, 295, 300, 348, 455
- KEY, ELLEN, 70-77, 115, 324, 334, 430, 445, 466
- LICHTENBERGER, PROF. J. L., 160, 181, 363
- Living, high cost of, 26, 121
- Love and mating, 98, 390, 409, 414, 436
- Marriage, the ideal, 5, 29, 73, 79, 94, 97, 285, 394, 408, 438; statistics, 127; sacramental idea of, 6, 14, 463; changing ideas and conditions of, 9, 30, 32, 62, 271, 421, 438, 441; mercenary, 40; failures, 155, 217, 388; progressive, 412; hasty, 175, 223, 413; bureaus, 417; laws, 171, 174, 351; legal definition of, 280; dowry, 356; by family agreement, 355; contract, 357, 424; psychology of, 383; preparation for, 420; in modern literature, 86, 95, 101, 104; coercive, condemned, 160, 246, 286, 364; eugenic, 405
- Marriage and divorce, historical facts, 255
- Modern woman, the, 41, 61
- Monogamy, 71, 250, 363, 439, 464
- Moral ideas changing, 10 *et seq.*, 437
- Morality, double standard of, 148, 298, 307, 350
- Motherhood of the future, 430, 432
- Mothers, State assistance for, 54, 76, 428, 443
- MILTON, JOHN, 277
- Nevada divorce law, 227
- New York, divorce conditions in, 157, 181, 193, 199, 249, 456
- NORDAU, MAX, 82, 368
- Outrages, matrimonial, 77, 247, 249, 385, 448
- PANKHURST, EMMELINE, on divorce law reform, 309
- Parasite woman, the, 40, 102, 151, 196
- Polygamy, 170
- Poor, marriage and divorce problems of the, 150, 202, 217, 219, 222, 303, 374, 415
- Protestantism approves divorce, 274
- Reno, Nev., divorce colony in, 226, 234

- Romans, marriage and divorce among the, 265
Roman Catholic Church and divorce, 273, 328, 380
ROOSEVELT, THEODORE, 376
Royalties, European, and divorce, 313, 327, 332, 344

SALEEBY, DR. C. W., 116, 358, 369, 439
SCHREINER, OLIVE, 91
SCHROEDER, PROF. THEODORE, 367
Sex hygiene, 409
Sexes, proportions in United States, 31
Sexual morality, 93; diseases, 168, 173, 216, 399; freedom, 47, 73, 78, 82, 90, 382, 436
SHAW, BERNARD, 78-81, 169, 299, 306, 395, 427, 452
Social progress, 15 *et seq.*, 120, 224, 440
Socialism and marriage, 89, 92
SPENCER, ANNA GARLAND, 372, 448
SPENCER, HERBERT, 7
Sociologists, views on marriage, 7, 120, 389
South Carolina, divorce impossible in, 177

TARBELL, IDA, 111, 216, 446, 465
TOLSTOY, COUNT, 83
Trial marriages, 208, 411, 412, 422, 425

Unfitness, a bar to marriage, 172, 311, 354, 396, 443
Uniform divorce law, the, 178, 198, 200, 248, 250, 458

Votes for women, 49, 391

Washington State, divorce in, 169
WELLS, H. G., 220, 394, 423
Wife beating, 167, 291
Wife, the ideal, 98, 108, 268
WOLLSTONECRAFT, MARY, 44
Women and marriage, 14, 24, 38, 59, 99, 108, 147, 309
Women, emancipation of, 22, 34, 110, 290, 334, 347, 361; faults of, 102, 159; economical independence of, 22, 24, 111, 148, 158, 322, 391; proposing by, 417; in business, 23, 25, 37, 39, 56, 76
Women of the past, 14, 35, 257, 264
Women's rights movement, 42-47
Women and law-making, 50, 52







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